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STATE OF MICHIGAN

SUPREME COURT

JOHN A. ADAMS,
Petitioner,

vs.

JAMES RUSSELL,
Warden of the Marquette Prison;
ADVISORY BOARD OF PARDONS,
Respondents.

PETITION FOR HABEAS CORPUS.

STATE OF MICHIGAN—SUPREME COURT.

To the Honorable Chief Justice and Associate Justices of Said Court:

Your petitioner, John A. Adams, respectfully represents and shows unto the Court:

1. On the 3rd day of May, 1909, your petitioner was convicted in the Recorder's Court of the City of Detroit of the crime of seduction, and very soon thereafter sentenced to imprisonment in the State House of Correction and Branch of the State Prison, in the Upper Peninsula, located at Marquette, for not less than two years and a half, and for not more than five years; that his case was reviewed by the Supreme Court on a bill of exceptions and a writ of error, and the sentence and judgment of the court below was affirmed July 14, 1910 (People vs. Adams, 162 Mich., 371); that pending the writ of error your petitioner was released from imprisonment in said prison on bail furnished by him, but when his sentence was affirmed by the Supreme Court he was recommitted to said prison, and has ever since remained there.

2. In strict compliance with the rules and regulations adopted and promulgated by the Governor and Advisory Board in the matter of pardons, this respondent, on one of the official blanks in the hands of the Warden of said prison, made application, to the Advisory Board of Pardons for a parole, under Act No. 184 of the Public Acts of 1905, as amended (Public Acts 1905, p. 268; Public Acts 1909, p. 293),

and on the 5th day of December, 1911, the said Advisory Board of Pardons, at a session of the board held at the prison in Marquette, granted and issued and delivered to the warden of said prison for your petitioner a certificate or warrant of parole, a copy of which, together with the rules and regulations endorsed on the back thereof, is hereto annexed as Exhibit "A" of this petition; that your petitioner was granted by said certificate or warrant "a parole for the period of two months from and after January 29, 1912."

3. That records of the Advisory Board of Pardons in the possession of the Executive Clerk in the Governor's office show that on December 12, 1911, the following action was taken:

"Moved by Dr. Bradley that the action of the Board taken December 5, 1911, in paroling John Adams, No. 1927, from Marquette be vacated for the reason that the Board is at this date in possession of facts not known at the time of such action." Under date of December 14, 1911, the Executive Clerk mailed a copy of the above to the Warden of the Marquette Prison, and under date of December 17, 1911, the Warden mailed the certificate or warrant of parole to the Advisory Board of Pardons, and the same is now in the custody of the Executive Clerk.

4. The action of said Board vacating and revoking your petitioner's parole was without any notice to him, and without giving him any opportunity to be heard or an opportunity to disprove any charge or any fact alleged against him.

5. Having served his minimum sentence and having been granted a parole by the Advisory Board of Pardons, your petitioner is not now imprisoned on any process, judgment, decree or execution specified in the 8th section of the Habeas Corpus statute, the same being Sec. 9858 of the Compiled Laws of 1897, 3rd Vol., p. 2004.

6. Your petitioner is imprisoned and restrained of his liberty by Mr. James Russell at the State House of Correction and Branch of the State Prison for the Upper Peninsula, located at Marquette, in Marquette County, in this State, he, the said James Russell, being the Warden of said Prison; that the cause and pretense of such confinement and restraint is a conviction and sentence for the crime of seduction, as hereinbefore set forth; that a copy of the warrant, order or process is not annexed because no question arises upon it, and there is no occasion for it.

7. Your petitioner, on the 5th day of March, 1912, presented a petition for a Writ of Habeas Corpus to the Supreme Court of Michigan, in which he set up the facts of his case as above set forth, and alleged the illegality of his imprisonment as follows:

Your petitioner is advised and respectfully submits that his imprisonment is illegal, and that the illegality consists in this, to-wit: (1) The Advisory Board of Pardons has no jurisdiction or authority to vacate or annul a parole granted by it, the power and authority to retake and return any paroled convict to the prison from which he is allowed to go at large being within the exclusive jurisdiction and discretion of the warden or superintendent of such prison. (2) If the Indeterminate Sentence Act (Public Acts 1905, No. 184, p. 208; Public Acts, 1909, p. 293) is construed to confer on the Advisory Board of Pardons power to vacate or annul a parole granted by it without any notice to the convict and without giving him any opportunity to be heard or any opportunity to disprove any fact alleged or charge made against him, then said act is in conflict with the provisions of the Constitution of this State, that cruel or unusual punishments shall not be inflicted, and no person shall be deprived of life, liberty or property without due process of law; and also in conflict with the provisions of the Fourteenth Amendment of the Constitution of the United States, that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (3) If so construed, the convict would be twice punished for the same offense. (4) The Indeterminate Sentence Act and the rules and regulations promulgated thereunder contemplate that a parole will not be vacated or annulled by the recommitment and reimprisonment of the convict except when he violates the terms and conditions imposed by his parole or by said act or by said rules and regulations. (5) The term of imprisonment of this respondent has expired."

8. The Supreme Court of Michigan instead of granting a writ of habeas corpus as prayed by your petitioner, granted a writ of certiorari to inquire into the cause of detention, under the authority of Sec. 9889 of the Michigan Compiled Laws of 1897; and the court also granted a common law writ of certiorari to bring the record of the Advisory Board of Pardons in the case before the Supreme Court. Both writs were made returnable April 2, 1912.

9. Returns to said writs were made and copies of the same are hereto annexed as Exhibits "B" and "C."

Thereupon your petitioner by his counsel filed a traverse of the return of the Advisory Board of Pardons so far as it set forth the facts alleged in the communication to the Board of December 99, 1811 (Dec. 9, 1911), of the Hon. Phillip T. Van Zile, and a copy of said traverse is hereto annexed as Exhibit D.

10. Upon the record as so made up the case was argued and submitted to the court on the 2nd day of April, 1912.

The Attorney General, represented by Mr. George S. Law, made no attempt to sustain the power or jurisdiction of the Advisory Board of Pardons to vacate or annul a parole without notice to the convict and giving him an opportunity to be heard, but contended that inasmuch as the Supreme Court in affirming the conviction of your petitioner had held that in determining the length of his imprisonment, the time he was out on bail should not be included, and that he was "subject to imprisonment under the sentence for the unexpired period thereof remaining at the time of his release" (on bail), your petitioner's minimum sentence did not expire until January 29, 1912, and the parole of your petitioner was void, because his application was made to and was received and acted upon by the Advisory Board of Pardons, before the expiration of the minimum sentence of your orator.

11. The court took the case under advisement and afterwards, to-wit, on the 15th day of April, 1912, filed an opinion by Mr. Justice Blair, in which it was held that your petitioner's parole was void on the ground taken by the Attorney General.

The case is reported in the Detroit Legal News, vol. 19, p. 211, and in the N. W. Reporter, vol. 135, p. 658, and will appear in 169 Mich.

The petition of your petitioner for release from his imprisonment was denied.

12. Your petitioner further shows that he and his counsel inadvertently overlooked the fact that he was entitled, under the laws of Michigan, to a deduction from his minimum sentence for the "good time" accorded to convicts in the prisons of the State.

At the time of your petitioner's conviction and sentence (and ever since then) section 2112 of the Compiled Laws of Michigan of 1897 was in force, and your petitioner earned and was and is entitled during the first and second years of his sentence to five days of good time for each month and during the third year to six days of good time for each month, making a total of 138 days, so that his minimum sentence of two years and a half expiring January 29, 1912, actually expired under the good time law long before the Advisory Board of Pardons received and acted upon his application for a parole.

13. Your petitioner further shows that the present parole law of the State providing for the release of convicts on parole has been in force since 1903 (Public Acts, 1903, p. 268); that down to the decision, April 15, 1912, of the Supreme Court of the State in your petitioner's case, it was the constant practice of the Advisory Board of Pardons to receive and act upon the applications of convicts, before and in anticipation of, the expiration of their minimum sentence, and to grant paroles

from a designated date at or after the expiration of the convict's minimum sentence; that at the time your petitioner's parole was vacated by the Advisory Board of Pardons and at the time it was held void by the Supreme Court of the State, there were a large number of such paroles outstanding, and there are a large number of such paroles still outstanding, where the convict is at large, and his paroled probationary period has not expired. Yet the prison authorities, the courts and all other officials in the State, have recognized such paroles as legal and valid, and notwithstanding said decision of the Supreme Court of the State, no paroled convict or prisoner (other than your petitioner) has been kept in or returned to prison on the ground that his parole was prematurely granted and void.

Your petitioner, therefore, respectfully submits that the discrimination against your petitioner, in the construction and enforcement of said parole law by the State and its authorities, is a violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

14. Your petitioner has caused his counsel in this case to make a personal examination of the parole record of the Advisory Board of Pardons, from which it appears that between August 1, 1911, and April 15, 1912, there were twenty-four paroles (other than your petitioner's) acted upon and granted before the expiration of the minimum sentence of the respective convicts, and as to seventeen of them the probationary period had not expired October 1, 1912.

A list of said paroles, with the parole numbers; the sentences, the dates the paroles were granted, and the dates they were to become operative and the probationary periods were to commence to run, is annexed to this petition as Exhibit E.

14½. That your petitioner and his counsel have been informed and believe and charge the fact to be that since said Supreme Court decision April 15, 1912, down to the present time, October 14, 1912, the Advisory Board of Pardons has continued to entertain and act upon applications for parole, and to grant the same before the minimum sentence of the convicts have expired, the sam as had been the constant practice of the board before said decision, and have granted a large number of such paroles, which have been issued and are now outstanding.

15. The Advisory Board of Pardons now consists of Dr. James B. Bradley, Mr. Nelson C. Rice and Mr. DeHull N. Travis and Robert P. Lane, executive clerk, is the secretary of

the board; and the office of the board is in the Capitol Building, in Lansing.

16. Your petitioner has been advised that his further imprisonment on his said conviction and sentence is illegal and that the illegality consists in this, to-wit:

(1) The good time law entered into and was a part of the sentence of your petitioner, and therefore his minimum sentence had expired when the Advisory Board of Pardons received and acted upon his application for a parole.

(2) The parole granted to your petitioner December 5, 1911, ordering his release January 29, 1912, was and is a valid warrant or instrument for his discharge.

(3) The Advisory Board of Pardons had no power to vacate or annul the parole granted to your petitioner.

(4) If the Advisory Board of Pardons had power to vacate or annul the parole granted to your orator, it could only do so on notice to him, and giving him an opportunity to be heard.

(5) The parole law as construed and enforced in the case of your petitioner unduly discriminates against him, and constitutes a denial by the State of that equal protection of the laws guaranteed to all persons within the jurisdiction of the State by the Fourteenth Amendment of the Constitution of the United States.

(6) The vacation of petitioner's parole without notice to him and an opportunity to be heard was a violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

(7) As petitioner was not guilty of any violation of the conditions of his parole during the two months commencing January 29, 1912, he is now entitled to his absolute discharge.

(8) The reasons stated in petitioner's former petition for a writ of habeas corpus as set forth in the 7th paragraph of this petition are renewed and relied upon.

PRAYER.

Your petitioner prays that a writ of habeas corpus may be allowed and issued out of and under the seal of this Court to inquire into the case of his imprisonment and restraint, and that an ancillary common law writ of certiorari may be allowed and issued directing the Advisory Board of Pardons to certify into this Court a complete list of all the paroles granted by the board before the minimum sentences of the convicts had expired.

This petition is signed and verified in behalf of the petitioner by Fred A. Baker, his authorized attorney.

(Signed) FRED A. BAKER,
Attorney for Petitioner.

STATE OF MICHIGAN,
COUNTY OF INGHAM—ss

On this 14th day of October, 1912, before me, a Notary Public in and for said County, personally appeared Fred A. Baker and made oath that he had read and knows the contents of the above and foregoing petition, and the same is true to the best of his knowledge, information and belief.

(Sgd) C. H. HOPKINS,
Clerk Supreme Court.

EXHIBIT A.

Parole No. 2287.

STATE OF MICHIGAN
Office of
THE ADVISORY BOARD IN THE MATTER OF PARDONS
Lansing.

HON. JAMES RUSSELL, Warden,
Marquette, Michigan.

Sir:—

You are hereby authorized and ordered by THE ADVISORY BOARD IN THE MATTER OF PARDONS, acting under the provisions of the laws of this State, to release on parole Convict John Adams, No. 1927, who has complied with all the requirements of the law relating to his application for permission to go at large outside of the confines of said prison, above named, and who has been by said board granted parole for the period of two months from and after January 29, 1912.

Said convict shall, during said parole period, be under the immediate counsel and advice of Fred C. Anthony, of Negaunee, Michigan, who is named as his First Friend and Adviser, in accordance with Rules 1 and 2, printed on back hereof.

Said convict above named is hereby informed that in the granting of this parole he is not, in any manner, released from his obligations as a prisoner, and that he is under the legal custody and control of the warden of the prison from which he is released on parole, and that he is released subject to the rules and regulations printed on the back hereof, and the special conditions named below, with all of which he is required to become thoroughly familiar.

If, at the expiration of said parole period, the said convict

shall have fulfilled all the rules, regulations and special conditions named herein, then he shall be deemed to have served his full sentence, and shall receive a final discharge, as provided by the laws of this State.

Special conditions * * * *

THE ADVISORY BOARD IN THE MATTER OF PARDONS.
(Signed) Fred J. Russell, Chairman.
J. B. Bradley,
N. C. Rice.

Attest:
M. H. Defoe, Secretary.

RULES AND REGULATIONS GOVERNING THE CONDUCT OF PRISONERS WHILE ON PAROLE.

Rule 1. The paroled prisoner shall proceed at once to the place of employment provided for him, and shall not change his place of residence or employment without the consent of his first friend and adviser.

Rule 2. He shall on the first day of each month, until his final release, transmit to the warden of the prison from which he was paroled, a report of himself, stating whether he has been constantly at work during the preceding month, and if not, why not; how much he has earned, and how much he has expended, together with a general statement as to his surroundings and prospects, which report must be endorsed by his first friend and adviser.

Rule 3. He shall in all respects conduct himself honestly, avoid evil associations, and, in general, pursue the course of a law-abiding citizen, and shall totally abstain from the use of intoxicating liquors and from visiting saloons and all places of evil repute.

Rule 4. He shall, while on parole, remain in the legal custody and under the control of the warden or superintendent of the institution from which he is paroled.

Rule 5. He shall be liable to be retaken and again confined within the enclosure of the prison from which he was paroled for any reason or reasons that will be satisfactory to the warden, and shall be there retained subject to the approval of the Board of Pardons.

Rule 6. A convict on parole shall suffer the same forfeitures under the statute as if he were within the prison enclosures.

Rule 7. If he fails to report to the warden on the first day of each month or violates any of these rules, he forfeits his

parole and renders himself liable to be returned at once to the prison from which he was paroled to serve out the unexpired portion of his maximum sentence.

Rule 8. If he fails to return to the prison enclosure when required by the warden so to do, or if he makes escape while on parole, he will be treated in all respects as if he had escaped from the prison enclosure.

Rule 9. No paroled prisoner shall leave the State except upon the written permission of the Governor.

The authorities of the prison take a lively interest in all paroled prisoners, and they need not fear or hesitate to freely communicate with the warden of the prison from which they are paroled in case they become unable to labor by reason of sickness or otherwise.

ACT NO. 134, P. A. 1909, provides:

> "Whenever the convict so paroled shall have been committed to or confined in any such prison or reformatory, from a county other than the county in which the prison or reformatory in which he has been last confined is situated, it shall be made a condition of his parole that he shall not live or remain in the county in which the prison or reformatory in which he was last confined is situated, without the express consent of the officer or board granting such parole, which consent may be granted or revoked by such officer or board for cause shown at any time before such convict is finally discharged.

EXHIBIT B.

STATE OF MICHIGAN.
THE SUPREME COURT.

JOHN A. ADAMS,
Petitioner,
vs.
JAMES RUSSELL,
Warden of the State House of Correction and Branch of the State Prison in the Upper Peninsula,
Respondent.

Certiorari No. 25,057.

To the Honorable The Supreme Court of the State of Michigan:

In obedience to the writ of certiorari hereto attached, I do

hereby certify and return that before the coming of the said writ to me and on, to-wit, the 10th day of May, A. D. 1909, the said petitioner, John A. Adams, was placed in my custody as warden of said prison by virtue of a commitment issued by the Recorder's Court of the City of Detroit, County of Wayne and State of Michigan, upon the 3rd day of May, A. D. 1909, upon the conviction of the said John A. Adams in said Court upon said day of the crime of seduction, by the terms of which said commitment the said petitioner, John A. Adams, was sentenced by said Court to be confined in the State House of Correction and Branch of the State Prison in the Upper Peninsula for the minimum term of not less than two years and six months from and including the said 3rd day of May, A. D. 1909, and the maximum term of five years, certified copy of which said commitment is hereto attached and made a part of this return and marked Exhibit A.

That upon, to-wit, the 15th day of May, A. D. 1910, the said petitioner, John A. Adams, was released from said prison pursuant to an order of this Honorable Court made upon the 13th day of May, A. D., 1910, admitting the said petitioner, John A. Adams, to bail upon a recognizance in the sum of Ten Thousand Dollars, which said recognizance was entered into by said petitioner and filed with the clerk of said Court, all of which will more fully appear by the certified copy of said order hereto attached and made a part of this return and marked Exhibit B.

That on, to-wit, the 20th day of August, A. D. 1910, the said petitioner was again placed in my custody by virtue of a commitment issued by the Recorder's Court of the City of Detroit, County of Wayne and State of Michigan, after the conviction of the said petitioner, John A. Adams, in said Court had been confirmed by this Honorable Court, by which said commitment the said petitioner, John A. Adams, was committed to my custody with directions that I safely keep the said petitioner, John A. Adams, at said prison for a period equivalent to the unexpired portion of the sentence imposed upon him by the said Recorder's Court of the City of Detroit, in accordance with the command of the original commitment issued by the said Recorder's Court, as will more fully appear by the certified copy of said second commitment hereto attached, made a part of this return, and marked Exhibit C.

That upon, to-wit, the 5th day of December, A. D. 1911, I was advised by M. H. DeFoe, secretary of the Advisory Board in the Matter of Pardons, that at a meeting of said board held this day the application of John A. Adams, Prison No. 1927, was considered by said board and that the said John A. Adams had been granted a parole by said board for the period of two months, the said parole to take effect the 29th day of January,

1912, and that upon the same day there was delivered to me by said board the written parole, which is attached to the return of the Advisory Board in the Matter of Pardons to the writ of certiorari issued by this Court to the said board.

That on, to-wit, the 14th day of December, 1911, I was notified by the said M. H. DeFoe, executive clerk and secretary of the Advisory Board in the Matter of Pardons, that said board at a meeting held at Jackson Prison, upon the 12th day of December, A. D. 1911, had vacated the action of the board taken upon the said 5th day of December, 1911, in paroling the said petitioner, John A. Adams, No. 1927, and requesting that I return the written parole to said board, as will more fully appear from the letter of the said M. H. DeFoe, hereto attached, made a part of this return and marked Exhibit D. And that upon the 17th day of December, 1911, I returned the said parole to the said Advisory Board in the Matter of Pardons.

And I do further hereby certify and return that by virtue of the commitment of the said John A. Adams to my custody, as aforesaid, and by virtue of my office of warden of the State House of Correction and Branch of the State Prison in the Upper Peninsula and the laws of this State, I now have the said petitioner, John A. Adams, in my custody at the said prison.

Dated April 2, 1912.

(Signed) JAMES RUSSELL,
Warden of the State House of Correction and Branch of the State Prison in the Upper Peninsula.

STATE OF MICHIGAN,
COUNTY OF MARQUETTE—ss.

I, James Russell, Warden of the State House of Correction and Branch of the State Prison in the Upper Peninsula, do hereby certify that the attached papers marked "Exhibit A," "Exhibit B," "Exhibit C," are true and compared copies of the original mittimus, order discharging the defendant, and second mittimus, respectively, now on file in my office in the case of the People of the State of Michigan vs. John A. Adams; that I have compared the same with the original mittimus, order discharging the defendant, and second mittimus, and that the same are true and compared copies thereof.

Dated this 29th day of March, A. D. 1912.

(Signed) JAMES RUSSELL,
Warden of the State House of Correction and Branch of the State Prison in the Upper Peninsula.

EXHIBIT A.

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS.

THE RECORDER'S COURT OF THE CITY OF DETROIT.

THE PEOPLE OF THE STATE OF
MICHIGAN
vs.
JOHN A. ADAMS,
Information for
Seduction.
Before Judge Connolly.

At a session of the Recorder's Court of said City, held in and for said city, at the Court Room of said Court, on Monday, the 3rd day of May, A. D. 1909, John A. Adams, the defendant in the above entitled cause was, by a jury duly empaneled and sworn, after a full hearing in his presence, and on his former plea of NOT GUILTY, convicted of having (on the 20th day of November, A. D. 1908) committed the crime of Seduction at the City of Detroit, County of Wayne, Michigan.

And upon the said conviction, the said Court, at a session thereof, held as aforesaid, did, on the 3rd day of May, A. D. 1909, adjudge and determine that the said John A. Adams, who is now of the age of 36 years, should be committed to the Branch of the State Prison of this State at Marquette, in the County of Marquette, and therein safely kept and employed, according to the laws thereof, for a period of not less than two years and six months, from and including this date, with the recommendation that he serve the full maximum term of five years.

STATE OF MICHIGAN,
COUNTY OF WAYNE,
CITY OF DETROIT—SS.

I, John A. Grogan, Clerk of the Recorder's Court of the City of Detroit, do hereby certify that the foregoing is a correct abstract from the minutes of said Court in the above entitled cause, of the conviction and sentence of John A. Adams.

(Court Seal)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Detroit, this 3rd day of May, in the year of our Lord One Thousand Nine Hundred and Nine.

JOHN A. GROGAN,
Clerk.

EXHIBIT B.

THE SUPREME COURT OF THE STATE OF MICHIGAN.

STATE OF MICHIGAN,
COUNTY OF INGHAM—ss.

To the Warden of the Branch State's Prison of the State of Michigan at Marquette, Michigan:

Whereas, on the third day of May, A. D., 1909, in the Recorder's Court of the City of Detroit, Michigan, before the Honorable William F. Connolly, Associate Recorder of said Court, one John A. Adams was convicted of the crime of seduction, and on said third day of May, A. D., 1909, was sentenced by said Court to be committed to the Branch State's Prison of this State at Marquette, Michigan, and was in accordance with said sentence committed in said prison, and has been ever since and still is confined therein, the term of said sentence being not more than five years and not less than two and one-half years, with the recommendation of the maximum sentence; and whereas, on the thirteenth day of September, A. D., 1909, at a regular session of the Supreme Court of the State of Michigan held at the Supreme Court Room in the Capitol, in the City of Lansing, Michigan, an order was entered by said Supreme Court admitting the said John A. Adams, defendant, to bail upon recognizance in the sum of Ten Thousand Dollars ($10,000), with two sureties, residents of Michigan, who should each justify before the Clerk of the Supreme Court, and which bond should be approved by said Clerk; and whereas, a bill of exceptions has been settled with assignments of errors thereto attached in said suit of the People of the State of Michigan vs. John A. Adams, which said cause is now pending in said Supreme Court for hearing upon said assignments of error; and whereas, this day a recognizance has been entered into and filed with the Clerk of said Supreme Court in the sum of Ten Thousand Dollars ($10,000) with two sureties, residents of the State of Michigan, who have each justified before the Clerk of said Supreme Court, and the form of which bond, together with the sureties thereof, have been approved by the Clerk of said Supreme Court.

You are therefore hereby required on the receipt hereof, to release the said John A. Adams from your custody in said Branch State's Prison of the State of Michigan, at Marquette, Michigan, unless he be detained by you for some other cause than that of the said sentence of seduction imposed on the

third day of May, A. D., 1909, by the Recorder's Court of the City of Detroit.

(Seal of Court) Given under my hand and the seal of the Supreme Court of the State of Michigan, at the Capitol, in the City of Lansing, Ingham County, Michigan, this 13th day of May, in the year of our Lord, one thousand, nine hundred and ten.

(Signed) CHAS. HOPKINS,
Clerk.

EXHIBIT C.

THE RECORDER'S COURT OF THE CITY OF DETROIT.

STATE OF MICHIGAN,
COUNTY OF WAYNE,
CITY OF DETROIT—SS.

THE PEOPLE OF THE STATE OF MICHIGAN,
vs.
JFHN A. ADAMS.

Information for Seduction
Before Judge Connolly.

At a session of the Recorder's Court of said City, held in and for said city, at the Court Room of said Court, on Monday, the 3rd day of May, A. D., 1909, John A. Adams, the defendant in the above entitled cause, was, by a jury duly empaneled and sworn, after a full hearing in his presence, and on his former plea of not guilty, convicted of having (on the 20th day of November, A. D., 1908) committed the crime of Seduction at the City of Detroit, County of Wayne, Michigan.

And upon the said conviction, the said Court, at a session thereof, held as aforesaid, did, on the 3rd day of May, A. D., 1909, adjudge and determine that the said John A. Adams who is now of the age of 36 years, should be committed to the Branch of the State Prison of this State, at Marquette, in the county of Marquette, and therein safely kept and employed, according to the laws thereof, for the period of not less than two years and six months, from and including this date, with the recommendation that he serve the full term of five years.

And the record and proceedings of this cause having been removed to the Supreme Court of the State of Michigan by Writ of Error issued to the Recorder's Court for the City of Detroit, and the same and the matters in error assigned having been made, seen and inspected and duly considered by the said

Court, and it appearing to the said Court that in said record and proceedings, and in giving of judgment in said Recorder's Court there was no error, and it being ordered and adjudged by the Supreme Court of the State of Michigan that the judgment of said Recorder's Court for the City of Detroit be and the same was in all things affirmed and the cause removed to the Recorder's Court of the City of Detroit with directions to issue a new commitment to the Sheriff of Wayne County and the Warden of the State House of Correction and Branch Prison at Marquette commanding said Sheriff to forthwith apprehend said defendant, said John A. Adams, and deliver him to the said Warden, and commanding him, the said Warden, to receive and safely keep the said defendant for a period equivalent to the unexpired portion of said sentence in accordance with the command of the original commitment in said cause.

Now therefore, we command you, George T. Gaston, Sheriff of Wayne County, to forthwith apprehend said defendant, John A. Adams, and deliver him to James Russell, Warden of the State House of Correction and Branch Prison at Marquette, Michigan, and

We command you, James Russell, Warden of the State House of Correction and Branch Prison at Marquette, to receive and safely keep said defendant, John A. Adams, for a period equivalent to the unexpired portion of his said sentence in accordance with the command of the original commitment in said cause.

(Signed) WILLIAM F. CONNOLLY,
(Seal) *Judge of the Recorder's Court.*

STATE OF MICHIGAN,
COUNTY OF WAYNE.
CITY OF DETROIT—SS.

I, John A. Grogan, Clerk of the Recorder's Court of the City of Detroit, do hereby certify that the foregoing is a correct abstract from the minutes of said Court in the above entitled cause, of the conviction and sentence of John A. Adams.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court,
(Seal) at Detroit, this 18th day of July, in the year of our Lord, one thousand, nine hundred and ten.

(Signed) JOHN A. GROGAN,
Clerk.

Per Ignatius F. Lichinfield, Deputy Clerk.

EXHIBIT D.

STATE OF MICHIGAN—EXECUTIVE OFFICES, LANSING.

December 14, 1911.

My Dear Warden:

The following is an excerpt from the official minutes of the meeting of the Advisory Board in the matter of Pardons held at Jackson Prison, December 12, 1911:

"Moved by Dr. Bradley that the action of the Board taken December 5, 1911, in paroling John Adams, No. 1927, from Marquette, be vacated for the reason that the board is at this date in possession of facts not known at the time of such action."

Kindly return Adams's parole to this office.

Very respectfully,

M. H. DEFOE,
Executive Clerk.

Hon. James Russell, Warden,
Michigan Branch Prison,
Marquette, Michigan.

DL

EXHIBIT C.

STATE OF MICHIGAN—THE SUPREME COURT.

JOHN A. ADAMS,
Petitioner,

vs.

FRED J. RUSSELL, *Chairman*,
Dr. James B. Bradley, and Nelson C. Rice, constituting the Advisory Board in the Matter of Pardons of the State of Michigan,
Respondents.

Certiorari No. 25,057.

To the Honorable, the Supreme Court of the State of Michigan:

The undersigned, respondents herein, hereby make return to the writ of certiorari hereto attached, issued in the above entitled cause upon the 5th day of March, A. D., 1912, and hereby certify that the following proceedings were had before the Advisory Board in the Matter of Pardons of the State of Michigan in the matter of the application of John A. Adams for parole.

That the indeterminate sentence record in the case of said petitioner, John A. Adams, together with the statement of Honorable William F. Connolly, Judge of Recorder's Court, made in accordance with the provisions of Section 4, of Act 184,

Public Acts of 1905, was filed in the office of the Governor on, to-wit, the 7th day of May, A. D., 1909, copy of which said indeterminate sentence record is hereto attached, and made a part of this return.

That on, to-wit, the ..... day of August, A. D., 1911, the said petitioner, John A. Adams, made application to the Advisory Board in the Matter of Pardons for a parole in accordance with the provisions of the indeterminate sentence law, same being Act 184, of the Public Acts of 1905, copy of which application is hereto attached and made a part of this return.

That on, to wit, the .....day of August, A. D., 1911, there was filed with said Advisory Board in the Matter of Pardons a proposal to act as first friend and advisor of said petitioner, John A. Adams, signed by Fred C. Anthony, of Negaunee, Michigan, copy of which said proposal is hereto attached and made a part of this return.

That at a meeting of the members of said Advisory Board in the Matter of Pardons at the city of Marquette upon the 4th day of December, A. D., 1911, at which meeting were present all the respondents herein, the said Advisory Board in the Matter of Pardons authorized the parole of said petitioner, John A. Adams to take effect January 29, A. D., 1912, for the period of two months, as will appear from the minutes of the said Board relating thereto, copy of which is hereto attached and made a part of this return.

That upon the 5th day of December, A. D., 1911, the said Advisory Board in the Matter of Pardons authorized the Warden of the State House of Correction and branch of the State Prison in the Upper Peninsula to release said petitioner, John A. Adams upon parole, and delivered to said warden of said prison a certificate or order of parole signed by these respondents, a copy of which said certificate or order of parole is hereto attached and made a part of this return.

That thereafter and on, to-wit, the 11th day of December, A. D., 1911, at a meeting of said Advisory Board in the Matter of Pardons held at the city of Jackson, Michigan, the said Advisory Board in the Matter of Pardons by a vote of all the members of said Board adopted the following resolution:

"Moved by Dr. Bradley that the action of the Board taken December 5th, 1911, in paroling John A. Adams, No. 1927, Marquette, be vacated for the reason this Board is at this date in possession of facts not known at the time of such action." As will more fully appear by a copy of the minutes of the meeting of said Board hereto attached and made a part of this return.

That thereafter, and on, to-wit, the 14th day of December, 1911, the warden of said prison was advised of the action of said Board in vacating its previous order paroling said peti-

tioner, John A. Adams, and requested to return the written certificate or order of parole to the office of said Board, and that on, to-wit, the 17th day of December, A. D., 1911, the said warden, in compliance with the request of said Board, returned said certificate or order of parole to said Board and the same is now on file in its office, all of which will more fully appear from the correspondence between said Board and the warden of said prison, copies of which are hereto attached and made a part of this return.

That these respondents constituting said Board were influenced in the action taken by them vacating the parole in the case of the said John A. Adams by the facts stated in the communication to said Board under date of December 9, 1911, by Hon. Philip T. Van Zile, Circuit Judge of the Circuit Court for the County of Wayne, and former prosecuting attorney of said County of Wayne, and who conducted the prosecution in the Recorder's Court of the city of Detroit against the said John A. Adams, a copy of which communication is hereto attached and made a part of this return.

That these respondents also attach hereto and make a part of this return the communication to said Board and to the Governor of this State by the said petitioner, John A. Adams, in relation to his application for parole.

And we further certify as commanded that the foregoing is a true and correct transcript of the proceedings and of the whole thereof, had by the said Board in the matter of the application of said petitioner, John A. Adams, for a parole. And we do further certify that the attached papers are true and correct copies of the original papers now on file in the office of said Board.

IN WITNESS WHEREOF, we have hereunto set our hands this 2nd day of April, A. D., 1912.

.....
.....
.....

Advisory Board in the Matter of Pardons.

Indeterminate Sentence Record.

Sec. 4 of Act No. 184, of the Public Acts of 1905, requires the Clerk of the Court to deliver a copy of this report to the Warden at the time the Sheriff delivers the prisoner at the prison, and to transmit a copy to the Governor within ten days, and provides a fee of not exceeding three dollars for such services.

Name .....John A. Adams .....sentenced May 3rd, 1909, in the Recorder's Court of the city of Detroit, Wayne County, for the crime of seduction, for a maximum term of five years,

and a minimum term of two years and six months, to Branch of State Prison at Marquette, Michigan. The Court, under the provisions of Sec. 1 of the above named act, recommends five years as a reasonable maximum sentence, and in accordance with the provisions of Sec. 4 of the above named act refers to Sec. 11,694, Page 3,477, Vol. 3 of the Compiled Laws of 1897; or to Act No. ..... Page .... of the Public Acts of 19.. as the statute under which sentence was imposed in this case.

Personal History of Prisoner.

The prisoner, so far as can be learned by the Clerk of the Court, has resided in this county for the past .... years at the city, village or postoffice of ..... and previously resided at the following places:

.....

Additional Information Concerning Prisoner.

Any important information concerning the prisoner which may be subsequently gained by the prison officials should be written below by them:

.....

.....

(Two other blanks, for Criminal History, found in this paper are unfilled with any matter whatsoever, and are therefore omitted.)

Judge—William F. Connolly, Detroit, Mich.
Prosecuting Attorney—Philip T. Van Zile, Detroit, Mich.
Sheriff—George T. Gaston, Detroit, Mich.

Names—Witnesses.

Rosa Renz	Geo. Larkins	Louisville, Ky.
Mrs. Joie Morse	John S. Schmittdiel	Detroit, Mich.
Elizabeth Harriet	Edw. Herzog	Louisville, Ky.
Mrs. Mary Heye		Louisville, Ky.
T. R. Peak		Louisville, Ky.
JohnPflug	Callie Davis	Cincinnati, O.
Mrs. Hattie Richards	Mina Kingsbury	Cincinnati, O.
Chas. Meyers	Harry Kingsbury	Cleveland, O.
Mrs. Kate Cochrane	W. F. Bumps	Brooklyn, N. Y.
Walter Malotte	Waldo W. Robinson	Columbus, O.

Names Jurors.

John Page.	L. G. Turnbull.
Joe Craven.	George A. Mitchell.
Edgar Terwilliger.	Louis O. Huhn.
Emil Noffart.	Almon Wolvin.
Billings G. Raymong.	Morris Goldgleid.
Robert Nemode.	Joseph Degel.

THE RECORDER'S COURT OF THE CITY OF DETROIT.

THE PEOPLE OF THE STATE OF MICHIGAN,
VS.
JOHN ADAMS.

Before Judge Connolly,
File No. 13,990.

The defendant, John A. Adams, alias A. Wiechers, was convicted in the Recorder's Court of the city of Detroit on Monday, May 3d, 1909, for the crime of seduction. The maximum statutory penalty for the offense of which he was convicted is five years. The Court sentenced him to not less than two and one-half years in the Branch of the State Prison at Marquette and recommended as his maximum term, five years.

On August 14, 1900, Adams was arrested in the city of Detroit for assaulting a woman and fined $95 and $5 costs, or 90 days in the Detroit House of Correction by Judge Sellers, a police magistrate of the city of Detroit. On November 16, 1900, the case was tried on appeal before Judge Murphy, then Recorder of the City of Detroit, and he was acquitted.

I attach hereto a letter from the Superintendent of the National Bureau of Identification, Mr. E. Van Buskirk of Washington, D. C., with reference to Adams' other antecedents.

In the case for which I sentenced him to Marquette his victim was a girl named Rosa Renz. He advertised in the Cincinnati Inquirer personal column and she answered the advertisement. Thereafter they met and he promised to marry her. When they reached Detroit in November, 1908, he procured a false affidavit for a license to marry which he had her sign, also a forged and false certificate of a ceremonial marriage and thereby induced her to believe that she was married to him and accomplished her seduction. He was arrested, examined in the Police Court of the city of Detroit and bound over to this court for trial. While the case was pending in this court he procured a commission to take depositions in the state of Ohio of several witnesses, and the testimony showed that he repeatedly suborned divers persons to commit perjury by swearing to scandalously false statements about the reputation of Rosa Renz. He had two trials in this court. Upon the first trial one juror held out 14 hours for his acquittal; upon the second trial he was convicted within twenty-five minutes after the jury had retired. There was nothing in the case to show a single redeeming virtue in Adams, and I am strongly of the opinion that the interest of justice will suffer great wrong if he is per-

mitted to go free short of a day of the full recommended maximum of five years.

WILLIAM F. CONNELLY,
Judge of the Recorder's Court.

Dated Detroit, Mich., May 6, 1909.

Washington, D. C., Dec. 11, 1908.

John J. Downey,
Supt. of Police,
Detroit, Michigan.

Dear Sir: I beg to advise you that John Adams, alias A. J. Weicher, alias Ryminger, No. 2138, is known at this Bureau as Andrew J. Wicher, alias "Joseph the Healer," No. 7511, from Cleveland, Ohio, where on October 10, 1906, he was arrested upon a charge of obtaining money by false pretenses. He claimed at that time to be a scientist and 40 years of age. As previous record at that time he had been as Anton J. Wicher, G-8224, Erie County, N. Y.; Pen March 31, 1902, 9 months, charge conspiracy, Jan. 19, 1904, charge conspiracy, 218 days.

Very respectfully,
E. Van Buskirk,
Supt. of Bureau.

Marquette, Dec. 4, 1911.

Board called to order at 9:30 a. m. Full Board present. N. C. Rice, Sec. Pro Tem.

File No. 777, 1927 John Adams.

Prisoner interviewed.

Moved by Bradley that parole be granted for two months to take effect January 29, 1912.

Ayes—Russell, Bradley, Rice.

Jackson, Dec. 11, 1911.

Board called to order 3 p. m. Present, Dr. Bradley, N. C. Rice. N. C. Rice, acting secretary pro tem.

Moved by Dr. Bradley that the action of the Board taken December 5th, 1911, in paroling John Adams, No. 1927, Marquette, be vacated for the reason this Board is at this date in possession of facts not known at the time of such action.

Ayes—Russell, Bradley, Rice.

December 14, 1911.

My Dear Warden:

The following is an excerpt from the official minutes of the meeting of the Advisory Board in the Matter of Pardons, held at Jackson prison, Dec. 12, 1911.

Moved by Dr. Bradley that the action of the Board taken December 5, 1911, in paroling John Adams, No. 1927, from

Marquette, be vacated for the reason that the Board is at this date in possession of facts not known at the time of such action.

Kindly return Adams's parole to this office.

Very respectfully,

Executive Clerk.

Hon. James Russell, Warden,
Michigan Branch Prison,
Marquette, Mich.

STATE HOUSE OF CORRECTION AND BRANCH PRISON.
Marquette, Mich., December 17, 1911.

Mr. M. H. DeFoe, Secretary,
Lansing, Michigan.

My Dear Mr. DeFoe:

In compliance with your request in your favor of the 14th inst. I am inclosing parole in the case of John A. Adams, an inmate of this institution.

Wishing you the compliments of the season, I am, sir,

Very Respectfully Yours,
James J. Russell, Warden.

Detroit, Mich., Dec. 9, 1911.

Hon. Chase S. Osborne,
Lansing, Mich.

My Dear Governor:

Last night to my great surprise I discovered in our public press that the Pardon Board had recommended a pardon of John Adams upon the conclusion of his minimum sentence of two years and one-half. This case was a most outragous case. I have just written them a letter giving them some of the facts of the case. The case went to the Supreme Court, People vs. John Adams, and the Clerk will give you, if you should desire, the record of the case which will confirm, I take it, the story I have written with reference to it to the Pardon Board. I do wish you would take this up. This man ought not to be released. His sentence of five years is far less than it ought to be, but is the extent of the law to be sure. As I have said to the Board, if this girl had been a year younger upon whom he committed this hellish crime, his sentence would, no doubt, have been for life. I wish you would look into this matter personally.

Very truly yours,
(Signed) Philip T. Van Zile,
Late Prosecuting Attorney Wayne Co.

P. S.: I inclose you copy of my letter to the Board.

Detroit, Michigan, 12/9/11.

Michigan Advisory Board of Pardons,
Lansing, Michigan.

Gentlemen:

I was very much surprised to notice in our evening papers that your Board had recommended that Adams, who was convicted here of seducing Rosa Renz should be pardoned after having served the minimum term of his sentence. The case was a very important case. The crime of seduction was perhaps the very least offense that he had committed, and it strikes me that if you knew the story of that case and the crime that Adams committed in connection with it that you would take back your recommendation and insist upon his serving the whole term, and that indeed was the recommendation of the Judge at the time of giving sentence, that he should be confined during five years, the maximum term.

The story briefly told is that this man Adams put a matrimonial advertisement into the newspapers recommending himself as being a man of some means, etc., and solicited answers. That little Rosa Renz, then living in Louisville, about 17 years of age, seeing this advertisement, was foolish enough to answer it. That he at once entered into correspondence with her. That she tried to get him to come to Louisville, but he finally induced her to come up to Cincinnati and meet him there, and she did. While she was at Cincinnati he took her about to some of the picture shows, and treated her very nicely and she went back home. That they had a talk with reference to being married. She wanted to be married at home, and he would not consent to that, or rather did not, and afterwards induced her to come to Columbus to be married. When she got to Columbus he made some excuses about not wanting to be married in Columbus, and they went to Cleveland, and in Cleveland they remained for some time after this, and finally he made some excuses, but promised to marry her if she would go with him to Detroit, and they came to Detroit. That he made several attempts to induce her to room with him while they were traveling about, but she would not do so until they were married. When he got her in Detroit he tried again to have her take the same room with him and she objected. He then obtained a room for her and for himself at a boarding house, and he went, as he told her, to get the license to be married. He went to the Clerk, obtained a blank, filled out a license and signed a fictitious name to it. He then got a marriage certificate, and filled it out, signing a fictitious name, and he took these papers to this Rosa Renz, a little ignorant, 17 year old girl, and he made her believe that if they both of them signed these papers that then they would be married, and that a minister was not neces-

sary. When she said that down in Kentucky they had to have a minister or an officer he told her that she was not in Kentucky now, but that she was in Michigan and that this would be a legal marriage. He made her believe this, and she commenced then to live with him as his wife. Finally she found there was no license granted by examining the papers. She became suspicious and began to look the thing up and found there was no license granted at all. She finally told the woman where she lived, and the woman told her that he had been committing a fraud on her and she was not married. She was crying and very much troubled over the situation and finally the woman where they stayed telephoned the police officers, and detectives were sent there and arrested both of them, brought them to the Police Station and the facts were found out. Opening his trunk they found this marriage license. He had threatened up to this time to leave her if she made any inquiries about her situation or made him any trouble, that he would go away and leave her.

Now, they undertook on the part of the defense, to get possession of Rosa Renz and to send her out of the country, and when he found he could not do that then he took it upon himself to show her to be a woman of bad character. Now, the full facts in the case did not come to the office of the Prosecutor until it had been pending for some little time. An examination was had and he was bound over and an information was filed against him. He was defended by reputable men and they asked for a stipulation to take the depositions of witnesses in New York, in Cleveland, in Cincinnati, and in St. Louis, and a stipulation of that kind was signed. He took this stipulation and these orders to take depositions, and first went to New York. There he took the deposition of a woman under a fictitious name signing herself Mary Williams, swearing that she had lived in Louisville and that this little Rosa Renz had been at her house consorting with men, and that she had even rented a room where she invited men to come and see her, and that this woman found her so public in her crime that she finally requested her to leave. He then went to Cleveland. He took the deposition there of some people where they had stayed at the hotel, trying to prove that Rosa Renz had been intimate with him while he was at the hotel. He took the deposition of one man who claimed to have witnessed through the keyhole and through some crevice through the wall Rosa Renz in bed with him. He took the deposition of another witness showing her compromising situations and what she had said and how she had acted. He went to Cincinnati. By this time these depositions began to come in, and the Prosecuting Attorney, I myself, had begun to examine the depositions, and then I sent for Rosa

Renz, and was convinced that the depositions were all a fabrication of lies, and then I put detectives upon this man, sent them to the witnesses in Cleveland and had them follow him to Cincinnati. In the meantime I found out that these witnesses in Cleveland had been induced to commit perjury and brought them to Detroit where they owned the whole matter up, that it was entirely false, and that Adams had induced them to make such depositions.

About this time the detectives found Adams in Cincinnati on a certain morning in company with a man whom he had picked up upon the river front, and they shadowed him to a hotel where he had rented a room, and over the transom they heard the whole bargain that was being made. He was to go before the magistrate, represent himself as a traveling man, assuming a fictitious name, and to make a deposition that while he was on the train coming from Louisville he fell in company with Rosa Renz, and that he made arrangements with her on the train to stay all night with him at a hotel in Cincinnati, and that he did so, and had connection with her. He was induced to sign several names to a piece of paper that they might pick out some name that would be easiest for him to write to be signed to his deposition. Adams furnished him with some clothes so that he might dress himself to show some semblance of his being a thrifty traveling man, and when they were about to leave the room the detectives went in and arrested both of them. Cincinnati detectives were in company with our detectives and he was taken to the police station, finally released, but the man whom he had in tow owned up to the whole matter and consented to come to Detroit, and he did, and we had him on the stand at the trial. He took depositions in Louisville in the same way, trying to break down the character of Rosa Renz, who was a young, unsophisticated girl, and the proofs showed that she never had stepped from the paths of virtue. The woman in New York, I was convinced, was a witness of the same kind and I sent detectives to New York to find her, but they were unable to find her. I afterwards got some information which led me to think that she was in New York. I took one of the detectives and went to New York myself, and after several days' search we succeeded in finding her in Brooklyn. She at first denied the whole story, said that her name was Kate Cochrane, that she knew this man Adams, whose real name was Weichers. She said she never had lived in Louisville, and that she was not the woman who made the deposition. However, I concluded to go back to New York and see the officer before whom the deposition was taken, and he consented to go with me back to Brooklyn and see the woman, and did so. As soon as he saw her he stepped up to her and called her

"Mrs. Williams." She began to look strange and say she was not Mrs. Williams, and he said: "Oh, you are the woman that signed that deposition that I took." She at first denied it, but within a minute or so she owned up to the whole matter, broke down and told us the truth. The story was that she herself when she was 18 years old had been overcome by this same man Weichers, whom we had arrested under the assumed name of John Adams; that he had promised to marry her, but had made excuses from time to time until she began to bear children and then he entirely refused. That they had two or three children by this unholy alliance, and that she had been in his power. That he visited her in New York, and that she had been afraid of him for a good many years. She was a woman then of 40 or 45 years old, and that on this occasion he came to her and threatened that if she did not make this deposition that he would kill her; that she was very much afraid of him, and that he told her just what he wanted her to say, rehearsed it with her and took her to New York before this officer where she swore that she was a resident of New York and was engaged in one of the hotels. She also swore in this deposition that she kept this house in Louisville as I have related and that Rosa Renz was guilty of committing adultery there with different men, and finally rented a room which she used for the purpose. She also told me that the deposition which was taken of a man in New York whose name has escaped me was entirely false, and that it was all arranged by Weichers, and the facts in it were sworn to as he had coached him to swear, and that this man was a bum from the Bowery, as she put it.

Now, all this defense by these depositions was the most outrageous crime that could possible be committed. The man was guilty of suborning witnesses in his defense, as I say, from the city of New York to the city of Louisville, and he came on with this bold front and presented some of these depositions in court, but as soon as he discovered what was doing, that we had some of his men there, he adopted a different plan and did not present them, but under a rule of evidence I succeeded in showing the fact.

Now, as I say, this man should be convicted of subornation of perjury in New York, in Cleveland, in Columbus, in Cincinnati, and in Louisville. I asked the superintendent of police in New York to take up the matter as soon as he got out of prison. Whether he will or not, of course, I do not know. But, he was tried and convicted. The little girl whom he lived with, he got her in a family way, and she was something like four months along at the time of the trial. She went back to Louisville with this terrible stain upon her character. The old German mother was here to testify. The case was one which the

people of Detroit and the people of the state—indeed, the newspapers of different states took it up. It attracted attention as being one of the most flagrant offenses.

While I was Prosecuting Attorney of the county it was my practice to try personally all of the very important cases. The result was I tried a great many cases in the court, and this one I considered to be one of this class of cases, and went into the court and tried it personally. So I became very familiar with the facts in the case. I also followed the case to the Supreme Court and argued it personally in that court, obtaining conviction in the court below, and an affirmance of the conviction in the Supreme Court of the state. When he was sentenced the Judge recommended that he should serve the full term, but under the act of the Legislature it was necessary for the judge to sentence him as he did, and now it comes to this pardoning Board and they are saying that a man like that should be released upon the minimum sentence of two and one-half years, when if the court could have had power to have done so his sentence would have been twice the amount at least of the maximum sentence, and had the little girl, Rosa Renz, been a year younger, his sentence would have been for life, which would be really deserved by the enormity of the crime which he has committed. I have written this letter to you because it seems to me too bad that a man who was guilty of all of the crimes that he was guilty of in this transaction should be released after service of two years and a half in the penitentiary, and I hope that the pardoning Board will take up the matter and reconsider the releasing of this man John Adams.

My only excuse for writing to you is because it has seemed to me that you could not have understood the case, and that if you did there would be no such order. Should you want to see further the proof and the story of the case, you will find it in the files of the Supreme Court where you will find a full record of the case as it was taken to the Supreme Court and sustained by that court.

Very truly yours,

Philip T. Van Zile,
Late Prosecuting Attorney Wayne County.

Night Letter.

Marquette, Mich., December 15/11

Advisory Board of Pardons,
Jackson Prison, Jackson, Mich.

I am preparing typewritten statement in answer to articles in Detroit News by Judge Van Zile, police officials and reporters, which I claim is untrue after you receive my answer I expect your honorable Board to investigate same and if

you find that I have told you a falsehood either in my answer or in my application for clemency then deal with me accordingly, but kindly reserve judgment until after that time.

John A. Adams,

1:45 a. m.

Night Letter.
Marquette, Mich., December 16/11.

Governor Osborn,
Lansing, Mich.

Dear Sir: I beg to inform your honor that I was granted a parole by your honorable Board December 6. Since that time numerous articles have appeared in Detroit public press by Judge Van Zile, police officials and reporters, which I claim are untrue. I am preparing type-written statement in answer to same which will be sent to you by mail and trust that Your Honor will have same investigated, and if you find that I told a falsehood either in my answer or in my application for clemency then I would ask that I am dealt with accordingly. I kindly ask Your Honor to see that judgment is reserved until after that time.

John A. Adams.

8:05 a. m.
Marquette, Mich., January 6, 1912.

Governor Osborn,
Lansing, Mich.

Dear Sir: Your telegram December 18 in answer to mine received. I have finished my answer to the allegations made against me through the press by Capt. McDonnell and Judge Van Zile. I hope and trust that your honor will spare a few minutes' time to see my side of the story that is based upon solid facts.

You gave me the promise last summer the time you were here, that you expected to be here soon again and that you would look into my case as you did not have at that time sufficient time to spare for the reason that you had to leave.

I am now only asking you for the promise you made me as my minimum term expired in one way, November 2, but I was admitted to bail after I had served one year and thirteen days. I was out 87 days under the order of your Supreme Court and I surrendered myself immediately when I was informed to do so. If the 87 days is deducted then my term expires on the 29th of this month.

I have never before been convicted of any crime against the statute la wof any State. I am satisfied that your honor will do justice in the matter, and believe that you will not allow a stranger in your State to be discriminated against.

Hoping to hear from you soon, I am yours very respectfully.

(Signed) John A. Adams.

Marquette, Mich., Jan. 18, 1912.

Secretary of the Advisory Board,
In the Matter of Pardons,
Lansing, Mich.

Dear Sir:

Inclosed please find some more of my answer that was left out of the part that I sent by special delivery which no doubt you received before this. Kindly add this to same as the last part on page 3 was not finished and is here continued. If the other part has already been read by the Governor and Advisory Board kindly call their attention to this part.

Please acknowledge receipt of this and also the other part I have sent, and oblige,

Yours very truly,
(Signed) John A. Adams.

Governor Osborn and Advisory Board,
In the Matter of Pardons,
Lansing, Mich.

Dear Sir and Gentlemen:

As already stated in my telegram to you that I was granted a parole by the Advisory Board in the Matter of Pardons December 5th inst., and since that time numerous articles have appeared in the public press by Judge VanZile, police officials, and reporters, these articles I claim are untrue.

I send you herewith my answer to every article that has come to my notice. I claim that the above officials have a motive for same.

I trust that you will take time to read my answer, and give the matter your kind consideration, every statement that I have made in my application for parole, and in this answer to the articles in the public press you will find is the truth to the best of my knowledge.

I trust that you will see that the matter is investigated and deal with accordingly, and that there is no discrimination shown in my case, to satisfy the desire of that particular class of the learned who have so large a share of the love of approbation as to study public opinion, and follow it, right or wrong, and thus beg a momentary fame from the passing crowd.

I make these remarks so that opposition to this parole will not surprise you, nor the real character of the opponent be mistaken, and allow them to take undue advantage of me simply because I am a stranger in your State behind iron

bars, and have no relatives or friends in Michigan to look after my interest; the only friend that I have found since my confinement in this place is Mr. E. C. Anthony, a member of the Prison Board; he kindly volunteered to look after my interest.

Mr. Anthony has known me ever since my confinement in this place. I ask your honor do you believe that a man of his standing would volunteer to get me a "First Friend?" and that even his own son, if I was the kind of a man the press and my opponents say I am? The allegations that Judge VanZile, the Prosecuting Attorney, has made against me are without foundation. He gave the general public to understand, as well as the Advisory Board of Pardons, that I have a large criminal record, which he positively knows is untrue from the information he received thru the inquiries he and the police department has made. I defy Judge Van Zile, John J. Downey, Superintendent of Police of Detroit, E. Van Buskirk, Supt. of Bureau of Washington, D. C., or any one else to prove that I have ever been convicted of any crime against the statute law of any State in the Union, outside of the one for which I am now in prison through perjured testimony that resulted in miscarriage of justice.

I see by the public press that the Board of Pardons expressed astonishment at the statement that I had a considerable criminal record. I will say that there is no one more astonished than myself if any other criminal record can be found than that which was fully stated in my application for parole.

The article further states, that attached to the letter from the Judge was one from Washington, D. C., as follows:

Washington, D. C., Dec. 11, 1908.

John J. Downey,
Supt. of Police,
Detroit, Mich.

Dear Sir:

I beg to advise you that John Adams, alias A. J. Weichers, alias Raminger, No. 2138, is known at this bureau as Andrew J. Weichers, alias Joseph Joseph the Healer, No. 7511, from Cleveland, O., where on October 10, 1906, he was arrested upon a charge of obtaining money by false pretenses. He claimed that time to be a scientist and 40 years of age.

As previous record at that time he had been arrested as Anton J. Weichers, G 8-224, Erie County, N. Y. Pen, March 31, 1902, 9 months, charge conspiracy. January 19, 1904, charge conspiracy, 218 days. Very respectfully. (Signed) E. VanBuskirk, Supt. of Bureau.

I will now give my answer to the above letter from E. VanBuskirk, Supt. Bureau, Washington, D. C., to Supt. of Police, and which the Judge did not forget to attach to his letter that he sent to the Board of Pardons.

The letter alleged that on Oct. 10, 1906, I was arrested upon t charge of obtaining money by false pretenses.

Why is it that the above gentleman did not take the time to find out what the outcome of the arrest for obtaining money by false pretenses was?

And if they did, why did they not inform the Board what the outcome was? That would have been their duty as officers of the law if they wanted to be honest and just, as men that occupy positions that they occupy should be?

I tell you why they did not, because they knew that there was nothing to it, and that the matter was thrown out of court. And that the money was not obtained by me, but by Dr. R. E. Break for medical services rendered by R. E. Brake, M. D., who for many years held the high position as Coroner at Findlay, Ohio.

It is furthermore alleged in the above letter from Washington, that on March 31, 1902, that I was arrested in Erie County, N. Y. Charge conspiracy, 9 months Erie County Pen, and another charge in January, 1904, conspiracy 218 days.

You will notice that it is alleged in the letter from Washington that I was twice arrested on the charge of conspiracy March 31, 1902, and another charge January, 1904.

My answer to same is that it is absolutely untrue. In my application I gave a full explanation of my arrest charge of conspiracy in Buffalo, Erie County, N. Y.

I will give you the statements of fact in this answer as already stated in my application as near as I can remember.

I stated in my application for clemency or parole, I was indicted by the grand jury on the charge of conspiracy in the spring of 1903. The information charged that I and a physician by the name of Franklin S. Temple had advertised in the daily newspapers of Erie County to cure disease, and that the patients were not all cured, giving the name of one of our patients that was not entirely cured. I was tried and convicted and sentenced to the Workhouse known as the Erie County Pen for 9 months. (The offense of conspiracy in New York state is *not a felony*, that I was charged with.) I appealed the case to the Supreme Court of Appeals, and it was there decided that there was no crime mentioned in the indictment and that what I was charged with was not a crime and that my attorney made a mistake by not demurring to the indictment and suspending proceedings.

As to my prison record will say that the Board had a full written statement before it and same was read by the members of your Board, not only once, but at three different meetings at this prison. The first time in June, 1911, when I appeared before the Board, Judge Russell of the Board read the reports fully (in the presence of Warden Russell) and asked me questions regarding same. And then I was informed to make out my application, which I did. The next time was in September when only two members of the Board were present, Judge Russell and Mr. Rice. The report card was read by both members at that time and questions asked me concerning same. The third time, on December 5, in presence of the full Board, the report card was read again by Dr. Bradley, also Deputy Warden Catlin was present, and the remark was made by one of the members of the Board "that there had not been a report for over a year."

The last report I have was in March, 1910, up to the day my parole was granted almost two years that the record showed no report. I understand that there are eleven reports. Most all of them were for me not being able to get out the task assigned to me. As to the statement on the report card that I had used profane language, I wish to say that I have never used profane language, which I have already stated to your Board personally at the last meeting in the presence of Deputy Warden Catlin. As to quarreling will say that I have never been informed that I was reported for same and I do not know of any quarrel that I have had with anyone in this prison.

On the day my parole was granted, December 5, I was ordered by the prison physician to remain in my cell on account of my eye, for which I was given treatment at the time with hot applications ordered by the prison physician and Deputy Warden Catlin ordered my eye bandaged.

I was convicted on perjured testimony. I am a victim of circumstance environment, intrigue and misfortune, which resulted in the miscarriage of justice.

The first article that came to my notice in the Detroit News of Dec. 8, 1911, I claim contained about ten statements that are untrue.

The first in which it states that "I lured pretty Rosa Renz, the 17-year-old Louisville, Ky., girl into a mock marriage." She was a young woman 19 years old and not a little girl only 17 years old (See Rec., pp. 2 and 3). As to mock marriage will say that is untrue and I was not tried or convicted for mock marriage, but for the charge of seduction, and there was no mock marriage of any kind. This mock marriage was made up by the police and some of the Detroit

attorneys as a foundation for a damage suit for $15,000 ($15,000), which was brought immediately after my arrest.

STATEMENT.

The information in this case charges that respondent, John A. Adams, on November 20th, 1908, in the City of Detroit, in the County of Wayne and State of Michigan, did seduce one Rosa Renz, she being then and there an unmarried woman.

I was tried in the Recorder's Court of the City of Detroit in the early part of March, 1909. After a long trial the jury disagreed after being out 17 hours. I made the request to have my second trial while I had my witnesses there from the other States. This request was denied. Previous to my first trial I was admitted to bail of $2,000 and not $10,000 (as the Detroit News states). This $2,000 was continued until just before my second trial, which was within about a week or ten days, and raised to $3,000, which I furnished. Just after all my witnesses had returned to their homes in other states my second trial was called and I was left without a witness and some of my most important witnesses on such short notice refused to return and I was handicapped in making my defense the way it should have been made, and I believe that the principal cause of th miscarriage of justice was because my attorneys would not allow me to take the witness stand in my own defense, which I believe weighed heavy against me. Furthermore, during the progress of my trial my bail bonds was raised from $3,000 to $10,000, which I was unable to furnish at that time, and I was taken into custody every day after court during the remainder of my trial, which did undoubtedly prejudice the jury against me.

The jury returned a verdict of guilty of seduction as charged in the information (May 3, 1909). Thereupon and immediately after bringing in said verdict of guilty, a motion was made in my behalf for a stay of proceedings and for the admission to bail pending a review of said cause in the Supreme Court on exceptions before sentence or by a writ of error, both of which motions were denied by the Court, and I was thereupon immediately sentenced by the Court from two and one-half years to five years. (The minimum term of imprisonment prescribed by law for the crime that I was convicted of is only six months.)

The complaining witness was one Rosa Renz, a young woman 19 years of age, who was born and brought up in the

City of Louisville, Ky. We first met in September, 1908, through answering an advertisement published in the personal column of the Cincinnati Enquirer (See p. 8 of Rec.). The advertisement is Exhibit A (Rec., page 155), and reads as follows: "Business man of means, refined, 36, wishes the acquaintance of congenial young lady, 18 to 25; fond of amusements; correspondence strictly confidential; give description. '9 Inquirer.'"

Miss Renz said on the witness stand that she was 19 years old and that she bought the Inquirer on the street from a newsboy. She did not buy any of the Chicago papers at that time because such advertisements were not in them. She had read such advertisements before. When asked if she had answered such advertisements before, her reply was, "I don't know that I have answered ads. before." Miss Renz said she did not know what there was about the advertisement that attracted her attention. She admitted that there was nothing in the particular advertisement that meant marimony, alhough she also admitted that she had testified in the police court on the examination that the advertisement which she answered was a matrimonial ad. She says she did not have matrimony in mind when she answered this advertisement and that she did not know what she wanted the acquaintance of the man for (See Rec., pp. 8 and 9). Miss Renz did not want anybody to know how she met me and she admitted that she at first deceived her mother as to how she gained the acquaintance of me (Rec., p. 9).

After some correspondence between Miss Renz and me she went from her home in Louisville to Cincinnati, a distance of about 200 miles, and there met me for the first time. Miss Renz deceived her mother as to where she was going on this occasion, telling her that she was going to spend the day with a young lady friend. Miss Renz said on the witness stand that "I entertained her for the day, and that on that evening before she returned home that I asked her to marry me." As to asking her to marry me that statement she made is absolutely untrue. We had only known each other from 11 o'clock in the forenoon to 7 o'clock in the evening of one day.

After her return home from Cincinnati there followed considerable correspondence (Rec., page 10). Miss Renz said that I in my letters to her, I was all the time talking about marrying her and that I mentioned it in nearly every letter, and that whenever I mentioned the subject of marrying her she answered in her letters to me.

That statement is also absolutely untrue as in not one of my letters to her did I say anything about marrying her.

I received fourteen letters from her and in all those letters I placed in evidence you will find that there is not one letter that relates to marriage, and those are the only letters I ever received from her, which are Exhibit 1 to 14 inclusive (See Rec., pp. 187-200). These were the only letters I received from her and you will find that not one of them contains the word of "marriage" or "matrimony," or anything that could be fairly construed into meaning that. Miss Renz states in her testimony that she had been engaged to a young man by the name of Clifford White, with whom she had kept company for several months, and after a short engagement broke off same.

On Nov. 8, 1908, by mutual arrangement, Miss Renz went from Louisville to Columbus, Ohio, a distance of about 400 miles, to meet me, and she said, "She went there for the purpose of marrying me."

That statement is also absolutely untrue as there had never been any talk about marrying either by mail or in person.

Miss Renz in her testimony said, "When she arrived in Columbus, that I took her to my boarding house and passed her off as my niece." Miss Renz makes no objection thereto and did nothing to straighten out her identity (Rec., p. 11). She was constantly in my company except at night, as she says she recognized Mr. Hamilton as the man who ran the boarding house. Miss Renz remained with me at this boarding house for a little over a week.

Miss Renz testified that I said: "I did not want to get married in Columbus because I had some trouble there." That statement was also untrue as I never had any trouble in Columbus, and never talked to her about marriage in Columbus. After she had been with me one week in Columbus I wanted her to go home because I had been given notice by Mr. Famillton, the proprietor of the house, to give up the rooms and told her the reason why and what Mr. Famillton had seen (See Famillton testimony, pages 116 and 117). She told me that she would not go home without me. I told her that I had business to look after and also had to go to Cleveland and Detroit, whereupon she told me that she would go wherever I went, and if I did not take her along that she would have me arrested, so the next morning we went to Cleveland and put up at the Wayside Inn.

During our journey from Columbus to Cleveland I gave her a short sketch of my life, informing her that I was a married man and that my wife and I had agreed to disagree. My wife had always lived in New York and wanted to live there near her brothers and sisters, and that I did not care

for New York and to live near her brothers and sisters and to settle down, and that I was more fond of traveling unless we had children, and that I was very fond of children and that my wife did not care to have children of her own, and I had refused to settle down until we had children of our own, and for that reason we had agreed to separate and get a divorce.

Miss Renz did not want to believe me in the first place that I was married and after we arrived at Cleveland I opened my trunk and showed her my marriage certificate which showed that I was married in Cleveland on the 25th day of June, 1903. After that I took her to the marriage record office in Cleveland and showed her the record of my marriage. After that she frequently cried and when I asked her what she was crying about she said: "That she was homesick and that she did not care to go home because she thought that she might be in the family way." I told Miss Renz that she was not in the family way and that she could go home in safety, but she refused to go home unless I went with her. Then she asked me if I would marry her if she was in the family way. I told her that I could not marry her until after I got my divorce. Then she wanted me to give her my marriage certificate to send home to her mother, after erasing my wife's name and inscribing her name instead and changing the date. I told her if she wanted a marriage certificate we could go and buy one for two dollars at the marriage license office. Then we went to the marriage clerk's office to get one, but when we arrived there we were informed that they did not furnish marriage certificates any more as they did at the time I was married in Cleveland in 1903. All they would furnish then was a license for marriage and that was no good for what she wanted it for. Then we dropped the matter for the time being.

I told her I had business to look after in Detroit for a few days and I wanted her to remain in Cleveland until I returned, or for her to go home, but she refused to do either, and so she came with me to Detroit. At this time we had stayed at that Wayside Inn about four days. This place was kept by Mr. and Mrs. Kingsbury. Miss Renz testified that at the Wayside Inn she spent the greater part of the time in my room with me. There was a bed in the room, but according to Miss Renz's testimony neither of us ever sat upon the bed and did not lie down upon the bed at any time according to Miss Renz's testimony at no time made any indecent proposal to her or asked her to have intercourse with me nor even hinted at it, although during this entire time we were kissing and embracing whenever the opportunity was favorable, according to Miss Renz's testimony.

From Cleveland Miss Renz and I took the boat for Detroit. Upon arriving in Detroit I secured rooms of Mrs. Morse at 55 West Elizabeth street, consisting of a front and back parlor. Miss Renz was known there as my sister. After we had been there a short time Miss Renz begged me to marry her, but I refused and told her I would not until I got my divorce. Then she asked me to go out and see if I could get a marriage certificate that could be filled out and that she could send to her mother. At this time she had already sent a letter home to her mother saying that she was married to me. I went to the marriage license office to see what could be done about getting a marriage certificate. I was informed that they did not furnish marriage certificates, but only marriage licenses. I took one and showed it to Miss Renz, telling her at the time that they did not furnish marriage certificates at the license clerk's office, but that I was told where I could buy any kind I wanted. She asked me to get her one that she could send home in a letter, so I went out and bought two of different forms so she could take her pick. So we filled both of them out and also the application for license. As she had not at that time decided which one she would send to her mother, I told her that in many states it constituted a common law marriage. She asked me in what states and I told her in New York and many others. I also told her at the time that New York was the easiest to get married and the hardest to get divorced as there was only one ground for divorce in New York. Then she asked me if I was getting my divorce in New York and I told her no, I am getting mine in Ohio. She asked me if a common law marriage was legal in Michigan and I told her I did not know if it was or not and did not care, as I did not believe in common law marriage. She asked me if there was not a preacher required in a common law marriage and I told her there was not one required as it would not be a common law marriage if a minister or justice had anything to do with it. After that things went on nicely for a few days until she asked me if I had any objection if she told Mrs. Morse, the landlady of the the house, that she was not my sister, but that she was my wife. I told her I would not allow her to do anything of the kind until after we were married, and that could not be done until I got my divorce. Whenever I went out on business she went in Mrs. Morse's private room and remained there until I came back in the company of Mrs. Morse and another man and the three were generally talking together very earnestly. I asked her who the other man was and she told me he was one of the roomers of the house. I found out later that he was an attorney by the name

of Streeter that the landlady, Mrs. Morse, had sent for, and through whom Miss Renz made the complaint and sued me upon a capias for fifteen thousand dollars ($15,000) damages within a few days after my arrest.

It was the theory of my attorneys that I and Rosa Renz were intimate while in Columbus and in Cleveland and if there was any seduction it took place in Ohio and not in Michigan; and that no sufficient time had elapsed and no proof was offered by the prosecution to show a reformation before coming to Detroit. To maintain this defense the testimony of George M. Familton given on a former trial was read in behalf of my defense, showing that he was the proprietor of the boarding house at No. 46 West Third Street, Columbus, where Rosa Renz and I stayed from November 7 to 15 (Rec., page 116). That on November 14 "in the morning" he noticed that the bed in Miss Renz's room looked as though it had not been occupied and later the door of the room being somewhat ajar, he noticed two people in bed together. He later accused me and ordered me to leave (See Familton testimony, Rec. pages 116 and 117).

Minna Kingsbury testified that she and her husband ran the Wayside Inn in Cleveland; that Rosa told her that I was her brother and that we appeared to be very affectionate, and that Rosa visited my room several times a day and in the evening. That the bed in Miss Renz' room was just rumped up, torn up in the center and dropped and the bed was not occupied by any sleeper. The linen had just been laundered and the creases still remained in the sheets and pillow slips and after Miss Renz left the linen on the bed was not changed as it was still clean and did not need changing. Mrs. Kingsbury testified further that the sheets in my room became soiled and had to be changed. The creases were out of the sheets after the first night. A lady's hairpin and side comb were found one morning in my bed. One morning the bed of Miss Renz' room remained undisturbed and in the same condition it had been made up the day before. Mr. Kingsbury's attention was called to this and I was told that we could not remain in the house any longer. That just prior to this Mrs. Davis had told Mrs. Kingsbury that she had seen Miss Renz and myself in bed together (See Mrs. Kingsbury's testimony on pages 98 to 101). Also Mr. Harry Kingsbury testifies that he rented two separate rooms to us at the Wayside Inn. One morning Mrs. Kingsbury called his attention to the bed in Miss Renz' room. It had not been disturbed and the pillow cases were not soiled at all. They were just as they came from the laundry (See Kingsbury testimony, Rec. page 110). Callie B. Davis also testified that she and

her husband roomed at the Wayside Inn in November, 1908, and that she saw me and Miss Renz there. On one occasion she went to my room for a spool of thread and saw Miss Renz and I in bed together. On one other occasion she saw me buttoning Miss Renz' dress. One morning she saw Miss Renz crying. When asked, Miss Renz said she was afraid to go home on account of something that had happened to her. That she reported the incident of seeing us in bed together to Mrs. Kingsbury (Mr. Davis' testimony, Rec. page 95).

John A. Adams.

MOTIVES OF CAPTAIN McDONNELL, CHIEF OF DETECTIVES, AND EX-PROSECUTING ATTORNEY JUDGE VAN ZILE.

The allegations that Capt. McDonnell and his associates have made against me are groundless, the motive for making same is because they have unlawfully invaded my constitutional rights by entering my private rooms and unlawfully taking therefrom all my private property, including a very large trunk, which was also my private property, placing same in the patrol wagon and carrying it to the police headquarters in the City of Detroit, and thereupon without my knowledge or consent breaking open the trunk and taking therefrom jewelry, diamonds, watches, medical diplomas, valuable papers, books, photographs, records, letters and other personal property. The trunk with some of its contents was returned to me through my attorneys, but there are many things that were taken out of my rooms and out of my trunk that have not been returned, including diamonds and other valuables amounting to hundreds of dollars in value.

This property was unlawfully taken from me while under arrest in the City of Detroit without a warrant for me or my property. Capt. McDonnell knows that some day he will have to render an account to me for same, that is the reason he wants to keep me here in prison. While I was being under arrest in the City of Detroit and while my property was being ransacked at police headquarters I requested Capt. McDonnell to send for certain attorneys for me, which he refused to do. One attorney that I named which I wanted was Edward H. Kennedy, and I named two or three others that I wanted, but he would not send for any of the attorneys that I wanted, and at last he sent for one that I did not ask for at all, and that was Mr. Navin, a friend of Capt. McDonnell and his associates.

At first I refused to engage him, but I was informed that Capt. McDonnell refused to send for another, so I had to engage Mr. Navin or go to court without an attorney.

After my first trial, in which the jury disagreed, and after Mr. Navin had received all the money that I was willing to give him, which was more than five times the amount that the original agreement called for, I refused to be bled for any more money by Mr. Navin until I was sure of my freedom. Then he turned traitor to me by giving Capt. McDonnell and his associates certain information concerning my case which I am sure was one of the principal causes of my conviction.

It is alleged by Capt. McDonnell that I got up depositions. In reply to same will say that the depositions were the work of my attorneys that were so highly recommended to me by Capt. McDonnell. Up to the time of my arrest I had never heard the word deposition and did not know what the word meant. However, some of the depositions may have been somewhat tainted, the majority were true in every word, but nevertheless they were not used in my defense by my attorneys in either my first or second trial. My attorney, Mr. Navin, who defended me in the first trial, did not offer the depositions because he thought he had enough witnesses without the depositions and because five of them that had made or gave their depositions were there in court to give their testimony in person.

During my second trial when Bumps and Bishop were my attorneys they would not use them because I told them just how the matter was standing. When my attorney, Mr. Bumps, refused to put them in as evidence, then they were used as evidence by the Prosecuting Attorney (not all, but some of them) to which my attorneys objected.

As already stated, the depositions were the work of my attorneys, Navin, Shehan and Bourke. They had a copy of the depositions in their office and they also had full privilege to the depositions that were on file in the Clerk's office of the Recorder's Court. Even after they were on file changes were made in the depositions by the attorneys that Capt. McDonnell so highly recommended to me and who afterwards turned traitor.

On the advice of my attorneys, Navin, Shehan & Burke, I went three times from Detroit to Louisville and back in order to have the matter settled out of court. The attorneys wanted Miss Renz's mother brought to their office in Detroit and they would make arrangements with the mother to take her daughter away from the Police Headquarters where she had been in charge of the matron since November 28, 1908.

The following is a copy of a letter I received while in Louisville trying to make arrangements with the mother to come to Detroit from my attorney, Mr. Navin:

Detroit, Mich., March 2, 1909.

Mr. John Adams,
Care of General Delivery,
Louisville, Ky.

Dear Sir: We are in receipt of your communication of yesterday in which you requested an answer to be sent to you care of General Delivery, Louisville, Ky.

It looks very much as though you will not be able to do anything with the party in Louisville and if you cannot, I suggest that you run over to Detroit where we can go over the situation fully. I can have the people here who represent the girl, send for the mother, and it will be absolutely necessary to get this girl out of the witness room at the very earliest convenience, because if we do not the state will be urging that the case be put to trial because of the fact that the witness is locked up.

You can readily see the necessity of a quick move in this direction, and if after your visit you are unable to do anything, my suggestion would be for you to come to Detroit at once. We will take the matter up with the parties here.

Very respectfully,
(Signed) Thomas J. Navin.

The mother refused to go to Detroit without an order of her daughter's attorney or a large sum of money in advance before starting, so nothing was done as the mother was looking forward to the $15,000 in the damage suit.

I sent you the above copy of one of Mr. Navin's letters because my conviction was much the cause of me going to see the mother of the girl and trying to have the matter settled out of court, which was really the work of my attorneys against my wishes. The Prosecuting Attorney made that one of his strongest points, claiming that it showed my guilt of the crime that I was charged with.

After my first trial, in which the jury disagreed, I asked Mr. Navin if he had any objection if I engaged another attorney to work jointly with him in my next trial. To this he said he had no objection. Then I had a talk with Attorney Groesbeck, a lawyer of Detroit. I wanted to engage him to work jointly with Mr. Navin. I was informed by Mr. Groesbeck that he could not represent me as he was consulted in the matter by Mr. Streeter, the attorney for Miss Renz, who had already brought suit for $15,000 damages against me. Attorney Groesbeck informed me at the same time that the

whole matter could be settled for little money and much less than it would cost me to fight the matter. I asked him how much money it would take and he told me that he would have to talk with my attorney, Mr. Navin, in regard to the matter. I was then informed by Mr. Navin that the whole matter could be settled and Miss Renz sent home to Louisville, and all parties satisfied for about $3,000. I told Mr. Navin that I would not think of giving anywhere near that amount. After a few days I was informed by Mr. Navin that the whole matter could be settled for $2,000 and no less and that the money would be divided; half would go to the Prosecuting Attorney and the girl and the other half would be divided among the other attorneys, and that Judge Connolly and Prosecuting Attorney had agreed to drop the charge against me as it would be much better for Miss Renz.

When I refused to give them that amount of money, I was given notice by Mr. Navin that he would withdraw from my case unless I paid to him $1,000 more at once, which I refused to do.

After that I jumped from the frying-pan into the fire by engaging Bumps & Bishop to defend me, two ex-assistant prosecuting attorneys. They had no political standing with the court or Prosecuting Attorney, but were the best of friends with Capt. McDonnell and his staff of detectives, and my conviction followed.

The matter was taken to the Supreme Court by my attorneys who succeeded in their application for a writ of error and bail. The bail was fixed at ten thousand dollars ($10,000) with two sureties residents of Michigan. After I had been here a little over a year I succeeded in getting my sister to come from another state and go to Lansing where she deposited the money in the bank to indemnify the bondsmen and my release followed after I had served one year and thirteen days. I was out a little over two months when I was informed that my conviction was affirmed by the Supreme Court and unless I surrendered myself within a certain time which expired August 12, 1910, my bonds were to be forfeited unless my bondsmen show cause why they should not be forfeited. I surrendered myself one day before the time expired that my bondsmen had to show cause why my bonds should not be forfeited, while I came voluntarily from New York to comply with the conditions of my bond. Prosecuting Attorney Van Zile was at once informed that I had come from New York to Detroit and given myself up, notwithstanding the very next day he took undue advantage by going to Lansing to my bondsmen and collecting the ten thousand dollars ($10,000) claiming that the bonds had al-

ready been forfeited by the court, which was untrue, and Judge Van Zile and Capt. McDonnell knew that it was untrue, as Capt. McDonnell telephoned to Judge Van Zile and told him that I was there at the Police Headquarters.

I had to engage another attorney to see that the money was returned to the bondsmen through the order of the court. The following was the decision of the court in the matter:

"In this case, the defendant moves the court to enter an order remitting the avails of his bonds to his bondsmen. The facts are the defendant is now in the Branch of the State Prison at Marquette under a sentence of from two and one-half to five years.

On the day before the time expired within which the defendant or his bondsmen might show cause why the bond should not be forfeited, the defendant voluntarily came from New York to Detroit. It is reasonable to assume that he made this long journey back to this jurisdiction in order to comply with the condition of his bond. If he was seeking to escape he would hardly have come to this city from a great distance.

On the day before the time expired in which he might give himself up, while on his way to the police station, the police arrested him before he reached the station. It is now claimed by Prosecuting Attorney Van Zile that because the police arrested him before he got to the police station he ought to lose the avails of his bond, viz., ten thousand dollars.

I must dissent from this contention. The state has his body in prison, visiting upon him the penalty with which the law punishes his crime. The administrators of justice owe it to the administration of justice to save it from every appearance of vengeful persecution. Adams is entitled to fair play. Justice owes that to itself, not to Adams.

The County of Wayne has incurred some small expense in corresponding with the defendant in investigating his whereabouts. The prosecutor will file an itemized bill of such expense with the Clerk of this court and the clerk is directed to refund to the bondsmen of this defendant the avails of said bond, less the amount of the Prosecuting Attorney's expenses in the matter."

After the above decision, Prosecutor Van Zile was asked many times by the Clerk for his itemized bill, that the Court ordered him to file with the Clerk of the Court, but he did not do it and by him not filing his bill the ten thousand dollars kept laying in the Clerk's Office in the form of a certified check until it had laid there nearly six months. The Clerk would not return the $10,000 certified check to the bondsmen until Judge Van Zile filed his bill. During all this

time my relatives were paying six per cent interest on this money which amounted to about $3,000 ($300) while the money was laying still waiting for Prosecuting Attorney Van Zile to file his bill for some small expense in correspondence, trying to find out my whereabouts, which was uncalled for. After waiting about six months to have the money returned to the bondsmen so that my sister could draw it from the bank, I had $50 sent to the clerk of the court to indemnify him as I knew the small expense in corresponding could not be one-tenth of $50. After that the Clerk returned the $10,000 certified check to the bondsmen. Prosecutor Van Zile never did file his itemized bill as ordered by the court and I am out the $50 that I had sent to the clerk of the court.

Perhaps Judge Van Zile is afraid that after my release from prison that I will make him file his itemized bill as ordered by the court and have the difference between his bill and $50 returned to me, and also see if he cannot be made to pay the interest on the $10,000 for six months.

Every act of Judge Van Zile in this matter shows nothing more than a vengeful persecution that is plain to be seen.

The only reason I can account for his attitude toward me is because I told him at one time what I thought of him after he had insulted one of my witnesses. No fair-minded person likes to see any man persecuted or unjustly prosecuted.

As already stated in my application for parole, I was principally convicted because the jury was given to understand that Miss Renz was at the time of my trial in the family way. (See Rec. Page 7). I will give $1,000 to any charitable institution that the Board of Parole may name if it can be shown that she was in the family way at the time of my trial. All the proof that I ask is that it be shown that Miss Renz gave birth to a child or had a miscarriage within a reasonable time from the last time she was with men and I will give Miss Renz another $1,000 for her trouble.

John A. Adams.

The following are three letters from the Clerk of the Recorder's Court in regard to the bill of Prosecutor Van Zile and the $10,000 as stated above.

Detroit, Michigan, Nov. 25, 1910.

Mr. John Adams,
Marquette, Michigan.

Dear Sir: I requested the Prosecuting Attorney some time ago to furnish me with a bill and he informed me that the auditors were preparing it. The prosecutor is now in

the East and expects to return any day and immediately upon his return I will send the bill to you as requested.

Very truly yours,

(Signed) JOHN A. GROGAN,
Clerk of the Recorder's Court.

Detroit, Mich., December 10, 1910.

Mr. John A. Adams,
Marquette, Mich.

Dear Sir: Your letter received and in reply will state that I have repeatedly requested the prosecuting attorney's office to furnish me with a bill and I have again called them up and they have promised to attend to it at once.

Very truly yours,

(Signed) JOHN A. GROGAN,
Clerk of the Recorder's Court.

Detroit, Mich., January 5, 1911.

Mrs. Veronica Melchior,
Milwaukee, Wisconsin.

Dear Madam: On instructions from the court I have this day returned to the bondsmen the $10,000 check deposited here in the matter of the bond of John A. Adams.

I also beg leave to acknowledge receipt of your American Express money order for $50 to pay expenses incurred by the prosecuting attorney in the matter.

Respectfully yours,

(Signed) JOHN A. GROGAN,
Clerk of the Recorder's Court.

It has been alleged by the press that I went under many names. In reply will say that it is untrue as the only names I ever went by is Weichers and Adams. My stepfather's name was Weichers and I went by his name until the year 1906. After that time I took my right father's name, my stepfather having died some years ago.

APPLICATION FOR CLEMENCY.

NOTE—This application must be filled in by applicant or by a prison official designated by the warden to render assistance. Any false or misleading statements made herein may be considered sufficient grounds for denying parole, pardon or commutation of sentence.

TO THE GOVERNOR OR THE ADVISORY BOARD

IN THE MATTER OF PARDONS.

Lansing, Michigan.

I hereby make application for commutation from the pardon or parole. Prison Name, John A. Adams; Prison No., 1927; Age, 53; Right Name, John A. Adams; Nationality, American; Crime, Seduction; County where Convicted, Wayne; Date of Sentence, May 3, 1909; Minimum Term, two and one-half years; Maximum Term, five years, Name of Judge, W. F. Connolly; Name of Prosecuting Attorney, Philip T. Van Zile; Name and address of first friend, Fred C. Anthony, Negaunee, Michigan; Where were you born and where have you lived, California, have lived in San Francisco, Cal., Los Angeles, Cal., Butte Mon., Denver, Col., St. Louis, Miss., Chicago, Milwaukee, New Orleans, Philadelphia, Washington, Baltimore, Manchester, New Hampshire. Since 1900 or for the last 12 years, between Detroit, Cleveland, Cincinnati, Buffalo and New York, back and forth; Where were you living when convicted, Detroit; State previous arrests, when, where and for what, Detroit in 1900, was acquitted by jury, once in Buffalo, N. Y., same was appealed to the Court of Appeals and the Court of Appeals stated that there was no crime charged in the indictment; Have you ever before served time in any prison or jail, I was sentenced that time for 9 months to the Work House; If so, when and where, with length of imprisonment and crime for which imprisoned, in Buffalo, it was supposed to be a misdemeanor, in other words I have never been convicted of any crime in my life before this charge of seduction; What was your former trade or occupation, Physician and dentist, also dealer in real estate; What is your occupation in the prison, work in the box factory; Have you ever been addicted to the use of liquor, no; Give name and address of parents, not living; If married, give name and place of residence of your husband or wife, have not heard from her for over a year and do not know where she is living now. Were you living with and supporting your family at time of your conviction, yes; Have you ever made previous application for parole, pardon or commutation of sentence, no; Give statement of charge upon which you were convicted, giving name, age and residence of the person against whom the crime was committed, the date and hour of day or night as claimed by the prosecution, and also your version of the affair. If robbery, burglary or larceny, state whether armed or unarmed and nature and value of property stolen. Give also the names of any and all persons who assisted you in committing the crime and state what

disposition was made of them. Seduction. Rosa Renz, aged 19 years, home Louisville, Ky., in the winter of 1907 and spring of 1908 I lived in Cincinnati, Ohio, with my wife at the Lombard Apartments. From there my wife went to visit her mother in Buffalo and other relatives in Binghampton and New York City and as she did not like Cincinnati she refused to come back. I played bachelor for some time and getting tired of that kind of life, I moved to the Hotel Rand after giving up the apartment and placing most of our furniture and other goods in storage.

While stopping at the hotel and feeling quite lonesome I inserted the following ad. in the Cincinnati Enquirer: Business man of means, refined, 36, wishes acquaintance of congenial young lady 18 to 25; fond of amusements; correspondence strictly confidential; give description. Address K 9 Enquirer."

I received the following answer from Rosa Renz, with many others:

Louisville, Ky., Sept. 21, 1908.

Dear Sir: I seen your ad in the Cincinnati Enquirer and take the pleasure to answer it. I am a congenial, respectable, honest young lady, 18 years of age, and I would like acquaintance of a business gentleman your age. I have blond hair, blue eyes, fair complexion, 5 ft., 4 in. tall, weigh 120 lbs. I am a German-American. If you think you would like further acquaintance I would be pleased to hear from you.

Yours truly,

Rosa Renz,
1531 W. Ormsby Ave., Louisville, Ky."

PROPOSAL TO ACT AS FIRST FRIEND AND ADVISER OF CONVICT.

To the Advisory Board in the Matter of Pardons.

Gentlemen:

I, Fred C. Anthony, at present engaged in the farming business at Negaunee and Low Moor, Michigan, agree to act as first friend and adviser of convict John Adams, No. 1927, at present an inmate of the Michigan Reformatory, and will employ him myself or secure suitable employment for him.

I also agree to take a friendly interest in said person, to counsel and direct him, and I will promptly report to the warden of the Michigan Reformatory any unnecessary absence from work, drunkenness or frequenting saloons, or any violation of the rules governing the conduct of paroled prisoners; I will see that he forwards his monthly report to

the Warden of the Michigan Reformatory on the last day of each month and will certify to its being correct.

If while acting as first friend and adviser of above named convict, I should remove from the county or state I will promptly notify the warden. Fred C. Anthony.
First Friend.

Dated at Negaunee, Michigan, this 28th day of August, 1911.

CERTIFICATE OF FITNESS OF FIRST FRIEND.

I hereby certify that I am acquainted with the above named first friend and adviser and I believe him to be, in every respect, a fit and proper person to act as first friend and adviser of the above named applicant for parole, and I am confident that he will faithfully comply with the conditions set forth in the above agreement. Alfred West.

Official position, Notary Public, Marquette County.

NOTE:

The certificate of fitness to act as first friend and adviser must be signed by the Judge of Probate, Sheriff or Prosecuting Attorney of the county where the first friend and adviser resides.

The first friend and adviser must be a responsible citizen of good standing in the community, and must not be a near relative of the applicant for parole.

When properly filled out, this blank must be returned to "Warden, Michigan Reformatory, Ionia, Mich."

I wrote her in answer to the above letter, that I would like to meet her and asked her to come up on a Sunday excursion and that I would meet her at the depot if she would let me know what time she would come in.

She wrote me that (if) I would send her a ticket she would come up.

I sent her a ticket and the next Sunday, October 11, 1908, she came to Cincinnati. I met her at the depot and we spent the day together. That evening about 8 p. m. I took her to the depot and saw her off on the train. Two days after I received the following letter:

Louisville, Ky., October 12.

Mr. A. J. Adams:

My Dearest Friend: I will write you a few lines to let you know that I reached home all O. K. My mother was at the depot waiting for me. It was 11 p. m. when I arrived

in Louisville. I enjoyed myself very much with you. And I hope that you also enjoyed yourself. I must say that I was more than pleased with you. You certainly know how to entertain your friends. I hope you will soon come down to see me. I am positive that I will make everything just as pleasant for you as you did for me. I am very glad you really love me and I thank you very much for your kind treatment. And I hope we shall soon meet again. And, my dear friend, if your intentions are entirely honorable and you think that you would like me for your true friendship, then I am yours, because I only want you for true friendship. I will close, hoping to hear from you soon. Take good care of yourself. I remain, yours truly, Rosa Renz.

I wrote her in reply to said letter that I was going to Columbus, Ohio, on business and would like for her to go to Columbus with me, or come there later on to meet me and remain with me during my stay, to which I received the following answer:

Louisville, Ky., October 15.

Dearest Antony: Your kind and most welcome letter of the 13th received and it is always my greatest delight to hear from you. These few lines leave me well. Hoping they will find you the same. I also wish that you could have taken me home. I am positive we would have had an enjoyable time going home together. I cannot tell how much I miss you. But still my thoughts are always of you. I was indeed very much delighted to learn that you consider me as your best friend. And to me most sure I will consider you as the best and dearest friend. And dearest Antony, I hope that no one can part our happy friendship. It would have been my greatest pleasure going to Columbus with you. I will come up any time you wish for me to come. And I would also like for you to come down here. You will be entirely welcome. From your loving Roza. It is in life's wide sea to ask you to remember me, may all your days be spent in bliss. May all your hopes succeed. Be as happy as I wish you will be blessed, indeed. Your loving and devoted Rosa.

The latter part of October, 1909, I went to Columbus, Ohio. From Columbus I wrote her a letter to come and she came during the first part of November. She remained there with me for about two weeks. From there we went to Cleveland, Ohio. We remained there for about two weeks. From there we went to Detroit. After we had been there about three or four days my arrest followed. This was in the latter part of November, 1908, almost three years ago, and here I am still yet.

Signed, John Antony Adams.

P. S.—My conviction was secured mostly by giving the jury to understand that the girl was in the family way (refer you to Rec. P. 7). I will give $1,000 to any charitable institution of Michigan that you may name if she was in the family way at the time, and will give Miss Renz another $1,000. All the proof that I ask is that it be shown that she gave birth to a child within 9 month after my arrest, or coming to medical sciences within 280 to 290 days from the time that she said on the witness stand that her menstrual flows had stopped, which was at that time over five months; or prove that she had a miscarriage during that time.

Hoping that you will see into the matter and oblige.

Yours very truly,

(Signed) John Anthony Adams.

Parole No. 2287.

State of Michigan.
Office of
The Advisory Board in the Matter of Pardons, Lansing.

Hon. James Russell, Warden,
Marquette, Michigan.

Sir: You are hereby authorized and ordered by the Advisory Board in the matter of Pardons, acting under the provisions of the laws of this State, to release on parole convict John A. Adams, No. 1927, who has complied with all the requirements of the law relating to his application for permission to go at large outside the confines of said prison, above named, and who has been by said Board granted a parole for the period of two months from and after January 29, 1912. Said convict shall, during said parole period, be under the immediate counsel and advice of Fred C. Anthony, of Negaunee, Mich., who is named as his first friend and adviser, in accordance with rules 1 and 2 printed on back hereof.

Said convict above named is hereby informed that in the granting of this parole he is not, in any manner, released from his obligations as a prisoner, and that he is under the legal custody and control of the Warden of the prison from which he is released on parole, and that he is released subject to the rules and regulations printed on the back hereof, and the special conditions named below, with all of which he is required to become thoroughly familiar.

If, at the expiration of said parole period, the said convict shall have fulfilled all the rules, regulations and special conditions named herein, then he shall be deemed to have served

his full sentence, and shall receive a final discharge, as provided by the laws of this state.

THE ADVISORY BOARD IN THE MATTER OF PARDONS.

Jas. J. Russell, Chairman.
J. B. Bradley.
N. C. Rue.

Attest: M. H. DeFoe, Secretary.

Rules and Regulations Governing the Conduct of Prisoners While on Parole.

Rule 1. The paroled prisoner shall proceed at once to the place of employment provided for him, and shall not change his place of residence or employment without the consent of his first friend and adviser.

Rule 2. He shall on the first day of each month, until his release, transmit to the Warden of the Prison from which he was paroled a report of himself, stating whether he has been constantly at work during the preceding month, and if not, why now; how much he has earned, and how much he has expended, together with a general statement as to his surroundings and prospects, which report must be endorsed by his first friend and adviser.

Rule 3. He shall in all respects conduct himself honestly, avoid evil associations, and, in general, pursue the course of a law-abiding citizen, and shall totally abstain from the use of intoxicating liquors and from visiting saloons and all places of evil repute.

Rule 4. He shall, while on parole, remain in the legal custody and under the control of the Warden or Superintendent of the institution from which he is paroled.

Rule 5. He shall be liable to be retaken and again confined within the inclosure of the prison from which he was paroled for any reason or reasons that will be satisfactory to the Warden and shall be there retained subject to the approval of the Board of Pardons.

Rule 6. A convict on parole will suffer the same forfeitures under the statute as if he were within the prison inclosure.

Rule 7. If he fails to report to the Warden on the first day of each month, or violates any of these rules, he forfeits his parole and renders himself liable to be returned at once to the prison from which he was paroled to serve out the unexpired portion of his maximum sentence.

Rule 8. If he fails to return to the prison inclosure when

required by the Warden so to do, or if he makes escape while caped from the prison enclosure.
on parole, he will be treated in all respects as if he had es-

Rule 9. No paroled prisoner shall leave the state except upon the written permission of the Governor.

The authorities of the prison take a lively interest in all paroled prisoners and they need not fear or hesitate to freely communicate with the Warden of the prison from which they are paroled in case they become unable to labor by reason of sickness or otherwise.

Act No. 134, P. A. 1909, provides:

"Whenever the convict so paroled shall have been commited to or confined in any such prison or Reformatory from a county other than the county in which the prison or Reformatory in which he has been last confined is situated, it shall be made a condition of his parole that he shall not live or remain in the county in which the prison or reformatory in which he was last confined is situated, without the express consent of the officers or Board granting such parole, which consent may be granted or revoked by such officer or Board for cause shown at any time before such convict is finally discharged."

EXHIBIT D.

STATE OF MICHIGAN—SUPREME COURT.

JOHN A. ADAMS,
Petitioner,
vs.
JAMES RUSSELL, Warden of Marquette Prison and
ADVISORY BOARD OF PARDONS,
Respondents.

The Advisory Board of Pardons having returned that the Board was "influenced in the action taken by them vacating the parole in this case of the said John A. Adams by the facts stated in the communication to said board under date December 9, 1911, by Hon. Phillip T. Van Zile, Circuit Judge of the Circuit Court for the County of Wayne and former prosecuting attorney of said County of Wayne and who conducted the prosecution in the Recorder's Court of the City of Detroit against said John A. Adams, a copy of which is hereto attached and made a part of this return."

Now comes the said John A. Adams, by Fred A. Baker, his Attorney, and categorically and specifically denies all the material facts set up and alleged in the said communication of the said Phillip T. Van Zile, and he claims the benefit of a demurrer thereto on the grounds that all of the alleged facts occurred before his conviction, and said communication was not made or submitted to the Advisory Board until after the parole was granted. The said John A. Adams submits that to dispose of the case on the assumption that the facts alleged by said Philip T. Van Zile as true would be a violation of the due process of law clause of the Fourteenth Amendment of the Constitution of the United States.

FRED A. BAKER,
Attorney for Petitioner.

Lansing, April 2, 1912.

EXHIBIT E.

Parole No.	Date of Sentence.	Sentence.	Paroled.	Probation Period.
2128	Dec. 18, 1905	6 to 14 years	Aug. 2, 1911	for 1 year from Dec. 18, 1911
2131	Sept. 27, 1910	1 to 5 years	Aug. 3, 1911	for 1 year from Sept. 27, 1911
2135	Sept. 18, 1906	5 to 10 years	Aug. 17, 1911	for 1 year from Sept. 18, 1911
2151	Oct. 15, 1906	5 to 10 years	Aug. 17, 1911	for 1 mo. from Oct. 16, 1911
1252	May 31, 1910	1½ to 3 years	Aug. 17, 1911	for 1 year from Dec. 1, 1911
2157	Apr. 10, 1911	1½ to 15 years	Aug. 17, 1911	for 1 year from Oct. 10, 1911
2160	Sept. 7, 1909	2 to 5 years	Aug. 23, 1911	for 1 year from Sept. 7, 1911
2177	Oct. 14, 1907	4 to 10 years	Sept. 1, 1911	for 1 year from Oct. 5, 1911
2179	Nov. 25, 1908	3 to 10 years	Sept. 2, 1911	for 1 year from Nov. 27, 1911
2180	Mar. 5, 1910	1½ to 15 years	Sept. 2, 1911	for 6 mo. from Sept. 6, 1911
2183	Nov. 17, 1906	5 to 10 years	Sept. 2, 1911	for 1 mo. from Nov. 20, 1911
2210	Dec. 8, 1906	5 to 10 years	Nov. 1, 1911	for 1 mo. from Dec. 9, 1911
2229	Dec. 19, 1906	5 to 12 years	Nov. 15, 1911	for 1 mo. from Dec. 20, 1911
2272	Dec. 14, 1908	3 to 3 years	Nov. 27, 1911	for 1 mo. from Dec. 14, 1911
2278	Dec. 12, 1910	1 to 5 years	Nov. 82, 1911	for 1 mo. from Dec. 9, 1911
2283	June 13, 1910	1½ to 5 years	Dec. 4, 1911	for 1 mo. from Jan. 15, 1912
2284	Jan. 10, 1911	1 to 10 years	Dec. 4, 1911	for 2 mo. from Jan. 15, 1912
2286	Jan. 10, 1908	4 to 10 years	Dec. 4, 1911	for 1 mo. from Jan. 12, 1912
2295	Dec. 18, 1909	2 to 10 years	Dec. 12, 1911	for 2 mo. from Dec. 14, 1911
2304	July 2, 1910	1½ to 3 years	Dec. 14, 1911	for 1 mo. from Dec. 19, 1911
2310	Jan. 22, 1906	6 to 14 years	Jan. 11, 1912	for 18 mo. from Jan. 22, 1912
2322	Mar. 7, 1910	2 to 12 years	Jan. 24, 1912	for 1 year from Mar. 7, 1912
2324	Feb. 14, 1911	1 to 14 years	Jan. 24, 1912	for 1 year from Feb. 14, 1912
2364	July 5, 1911	1 to 14 years	Apr. 11, 1912	for 1 year from July 5, 1912

I do hereby certify that the within and foregoing is a compared copy of the papers in John A. Adams vs. James Russell, &c., Petition for Habeas Corpus, No. 25394½, on file in the office of the Clerk of the Supreme Court.

Dated, Lansing, March 21, 1913.

Edward Widdifield.

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room in the Capitol, in the City of Lansing, on the eighteenth day of December, in the year of our Lord one thousand nine hundred and twelve.

Present the Honorable
Joseph B. Moore,
Chief Justice.
Joseph H. Steere,
Aaron V. McAlvay,
Flavius L. Brooke,
Franz C. Kuhn,
John W. Stone,
Russell C. Ostrander,
John E. Bird,
Associate Justices.

JOHN A. ADAMS,
Petitioner,
vs.
JAMES RUSSELL, Warden,
Respondent.

No. 25,394½.

In this cause a petition is filed asking for the allowance of a Writ of Habeas Corpus, and briefs having been filed in behalf of the respondent and due consideration thereof having been had by the Court, the Writ of Habeas Corpus is denied.

STATE OF MICHIGAN—SUPREME COURT.

JOHN A. ADAMS,
Petitioner,
vs.
JAMES RUSSELL, Warden, etc., Advisory Board of Pardons,
Respondents.

Habeas Corpus.

To Hon. Joseph H. Steere,
Chief Justice of the Supreme Court of Michigan.

Your petitioner John A. Adams, respectively requests that you allow a Writ of Error from the Supreme Court of the United States to the Supreme Court of Michigan in the above entitled cause to review the judgment therein denying the petition for a Writ of Habeas Corpus, upon the Federal questions presented by said petition and more specifically stated in the assignment of errors herewith submitted and filed.

An approval of the bond for costs herewith submitted is also prayed, and that the Citation required may be signed.

John A. Adams,
By Fred A. Baker,
his attorney.

March 13, 1913.

CITATION.

UNITED STATES OF AMERICA—ss.

To James Russell, Warden of the State House of Correction and Branch of the State Prison at Marquette, Mich., and the Advisory Board in the Matter of Pardons.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a Writ of Error, filed in the Clerk's Office of the Supreme Court of Michigan wherein John A. Adams is plaintiff in error and you are defendant in error, to show cause, if any there by, why the judgment rendered against the said plaintiff in error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph H. Steere, Chief Justice of the Supreme Court of Michigan, this 14th day of March, in the year of our Lord one thousand nine hundred and thirteen.

J. H. Steere,
Chief Justice of the Supreme Court of Michigan.

I hereby accept service of the above this 17th day of March, 1913.

Grant Fellows, Attorney General.
E. C. Austin,
Secy. to Pardon Board.

STATE OF MICHIGAN—SUPREME COURT.

JOHN A. ADAMS,
Plaintiff in Error,

vs.

JAMES RUSSELL, Warden of the State House of Correction and Branch of the State Prison at Marquette, Michigan, and the Advisory Board in the Matter of Pardons,
Defendants in Error.

ASSIGNMENT IN ERRORS.

The said John A. Adams, plaintiff in error, in connection with the allowance and filing of the Writ of Error herein submits and files the following assignments of error, which the said John A. Adams says manifestly appear in the record and proceedings and in the judgment aforesaid and in the refusal of the court to grant the Writ of Habeas Corpus prayed by him, and that he is now imprisoned by the State of Michigan, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and for the following reasons:

1. It is settled law in Michigan, that the reduction of sentence allowed to convicts for good behavior in prison enters into and is a part of the sentence, so that the sentence of plaintiff in error was for two years and a half less the "good time," he might earn, or five years, less good time.

2. The full minimum sentence of plaintiff in error expired January 29, 1912, but he had earned a reduction of 138 days for good behavior, and his actual minimum sentence under the good time law expired long before he was granted his parole of December 5, 1911, to become operative Jan. 29, 1912.

3. The decision of the Supreme Court of Michigan on plaintiff's first petition for Writ of Habeas Corpus, that his parole was prematurely granted and was void (169 Mich. 606) was based on an error of fact.

4. Said decision was also an error in law, for it is settled law in Michigan, as shown by a decision of the Court by the same Judge three days before your petitioner's case was decided, that the strict letter of a statute must give way to the

leading idea and purpose of the act and shall not be used to defeat the legislative intent. (169 Mich. 599, 600.)

5. The first petition of plaintiff in error for a Writ of Habeas Corpus, distinctly claimed that his parole could not be vacated without notice to him and an opportunity to be heard.

6. The second petition of plaintiff in error for a Writ of Habeas Corpus shows by proper averment of facts, that both before and after he was granted his parole, and after the decision of the Supreme Court on his first petition, April 15, 1912, down to the filing of his second petition, Oct. 14, 1912, the Advisory Board of Pardons continued to grant paroles to convicts before their full minimum sentence had expired, where the convict had earned good time.

7. The plaintiff in error is the only convict in Michigan who has been denied the full benefit of a parole granted after his minimum sentence less good time, has expired; and that as to him, however fair the laws of the state may be on their face, they have been and are being enforced with a heavy hand and an evil eye, amounting to a denial of the equal protection of the laws.

8. The Supreme Court of Michigan also denied to the plaintiff in error the equal protection of the Michigan Habeas Corpus Act, in that it held his second petition from Oct. 15, 1912, to Dec. 18th, 1912.

9. Plaintiff in error was not guilty of any breach of the conditions of his parole during the period of probation fixed by it, from Dec. 5, 1911, to Jan. 29, 1912, and he is now entitled to his full discharge.

10. Plaintiff in error has suffered the penalties of the law for his offense and his further imprisonment is in violation of the guarantees of liberty contained in the Constitution of the United States, and the Constitution of Michigan.

Wherefore plaintiff in error prays that the judgment below may be reversed and that the Supreme Court of Michigan may be directed to issue the Writ of Habeas Corpus prayed by him, and that unless it is shown on the return of the Writ that his parole was obtained by fraud, to discharge the plaintiff in error from any further imprisonment.

FRED A. BAKER,
Attorney for Plaintiff in Error.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That We, John A. Adams, as principal and Fred A. Baker of Detroit, Michigan, as surety are held and firmly bound unto James Russell, Warden of the State House of Correction and Branch of the State Prison in the Upper Peninsula of Michigan and the Advisory Board in the matter of Pardons, in the full sum of $200.00 to be paid to the said obligees to which payment well and truly shall be made we bind ourselves and our executors and administrators and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of February in the year of our Lord One thousand nine hundred and thirteen.

Whereas, lately at the City of Lansing the Supreme Court of the State of Michigan in a case pending in said Court between John A. Adams as petitioner and the said obligees as respondents, a judgment was rendered against the said John A. Adams, and whereas he, the said John A. Adams has obtained the allowance of a Writ of Error from the Supreme Court of the United States to reverse the said judgment and has obtained a Citation directed to the said obligees, citing and admonishing them to be and appear at the Supreme Court at Washington within 30 days from the date thereof.

Now, therefore, the condition of the above obligation is such that if the said John A. Adams shall prosecute such Writ of Error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

John A. Adams,
Fred A. Baker.

Approved: March 14th, 1913.
J. H. Steere,
Chief Justice of the Supreme Court of Michigan.

Endorsed (Filed March 14, 1913).
Chas. C. Hopkins,
Clerk Supreme Court.

State of Michigan,
County of Ingham—ss.

Jay Mertz, being duly sworn, deposes and says that he served a copy of the annexed Citation on Hon. Grant Fellows, Attorney General of Michigan, on the 17th day of March, 1913, by handing the same to him personally; that he served a copy of

the same on E. C. Austin, Secretary to the Pardon Board of the State of Michigan, by handing him a copy personally on March 17th, 1913; that he served a copy of the same on Hon. James Russell, Warden of the State House of Correction and Branch of the State Prison at Marquette, by placing the same in an envelope correctly addressed to the said James Russell, Warden of the State House of Correction and Branch of the State Prison at Marquette, Marquette, Michigan, with proper and legal postage thereon, and placing the same in the United States Post Office, at Lansing, Michigan, on the 17th day of March, 1913.

Subscribed and sworn to before me this 17th day of March, A. D. 1913.

Signed: Jay Mertz.

Chas. C. Hopkins,
Clerk of the Supreme Court of Michigan.

UNITED STATES OF AMERICA—SS.

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan:

GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Michigan before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between John A. Adams, Petitioner, and James Russell, Warden of the State House of Correction and Branch of the State Prison at Marquette, Mich., and the Advisory Board in the matter of Pardons, Respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said John A. Adams, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States Supreme Court, the 14th day of March in the year of our Lord, one thousand nine hundred and thirteen.

ELMER W. VOORHEIS,
Clerk U. S. District Court for the
Eastern District of Michigan.

[SEAL.]
Allowed by
JOSEPH H. STEERE,
Chief Justice of the Supreme Court
of the State of Michigan.

SUPREME COURT OF THE STATE OF MICHIGAN.

JOHN A. ADAMS,
Plaintiff in Error,

vs.

JAMES RUSSELL, Warden of the State House of Correction and Branch of the State Prison at Marquette, Michigan, and The Advisory Board in the Matter of Pardons,
Defendants in Error.

IN THE SUPREME COURT—ss.

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record, and of all proceedings had and determined in the above entitled cause by said Supreme Court; that I have compared the same with the original and that it is a truetranscript therefrom and of the

whole thereof; that attached thereto, are the petition for the Writ of Error; the Writ of Error with allowance endorsed thereon; the Citation with proof of service endorsed thereon on the attorney for the adverse party, a copy of the bond duly approved, together with the assignments of error in the Supreme Court of the United States. I further certify that on the denial of the Writ of Habeas Corpus in said cause, there was no written opinion filed by the said Supreme Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at the City of Lansing this third day of April in the year of our Lord one thousand nine hundred and thirteen.

[SEAL.]

Chas. C. Hopkins,
Clerk of the Supreme Court
of Michigan.

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Office Supreme Court, U. S.
FILED.
APR 28 1913
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 1048.

JOHN A. ADAMS,
Plaintiff in Error,

vs.

JAMES RUSSELL, Warden of the State House of Correction and Branch of the State Prison at Marquette, Mich., and The Advisory Board in the Matter of Pardons,
Defendants in Error.

Error to Supreme Court of Michigan.

Motion to Advance and Submit on Briefs May 5, 1913, with Proof of Service, and Stipulation.

FRED A. BAKER,
Counsel for Plaintiff in Error.

GRANT FELLOWS,
Attorney-General of Michigan,
Counsel for Defendant in Error.

DETROIT:
Record Printing Co., Free Press Bldg., 11 and 19 Lafayette Boulevard.
1913.

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 1048.

JOHN A. ADAMS,
Plaintiff in Error,

vs.

JAMES RUSSELL, Warden of the State House of Correction and Branch of the State Prison at Marquette, Mich., and The Advisory Board in the Matter of Pardons,
Defendants in Error.

Error to Supreme Court of Michigan.

MOTION TO ADVANCE CASE.

And now comes the said plaintiff in error by Fred A. Baker, his attorney and counsel, and moves the court to advance this case for hearing on Monday, the 5th day of May, 1913, and that the case be submitted to the court on that day on briefs and without oral argument.

This motion is based on the transcript of the record in the cause, and the following reasons:

1. This is a criminal case within the meaning of paragraph 3 of Rule 26.

2. This is a habeas corpus case, in which the plaintiff in error is entitled to the same prompt and summary hearings as would be accorded to him, under sections 755 and 761, Rev. Stat. of U. S., if he had applied to this court for a writ of habeas corpus.

3. The plaintiff is now in prison in the state House of Correction and Branch of the State Prison at Marquette, Mich., and is entitled to be discharged therefrom.

The matter involved in the case, briefly stated, is whether the imprisonment of the plaintiff in error, is not in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, that no state shall deprive any

person of his life, liberty or property without due process of law, nor deny to any person within its jurisdiction of the equal protection of the laws.

Printed copies of the transcript of the record in the cause, and of the brief for the plaintiff in error are filed and submitted with this motion.

Detroit, Mich., April 16, 1913.

FRED A. BAKER,
Attorney and Counsel for Plaintiff in Error.
420 Ford Bldg., Detroit, Mich.

To Hon. Grant Fellows,
Attorney-General of Michigan,
Counsel for Defendants in Error,
Lansing, Mich.

Dear Sir: You will please take notice that the above and foregoing is a true copy of the motion to advance, made by the above named plaintiff in error, and that said motion will be submitted to the court on Monday, the 5th day of May, 1913, and you are herewith served with two copies of the printed record and of brief for plaintiff in error.

Detroit, April 16, 1913.

FRED A. BAKER,
Attorney and Counsel for Plaintiff in Error.

EASTERN DISTRICT OF MICHIGAN, }
COUNTY OF WAYNE. } ss.

On this 17th day of April, 1913, before me, a notary public in and for said county, personally appeared Fred A. Baker, and made oath that on the 17th day of April, 1913, at Detroit, in said district, he mailed a true copy of the above and foregoing motion, and two copies each of the printed record and brief for plaintiff in error in said cause, postage prepaid, to the Hon. Grant Fellows, attorney-general of Michigan, and counsel of record for the defendants in error, at Lansing, Mich.

CHAS. THURMAN,
Notary Public, Wayne County, Mich.

My commission expires September 29, 1914.

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 1048.

JOHN A. ADAMS,
Plaintiff in Error,

vs.

JAMES RUSSELL, Warden of the State House of Correction and Branch of the State Prison at Marquette, Mich., and The Advisory Board in the Matter of Pardons,
Defendants in Error.

STIPULATION.

It is hereby stipulated that the above entitled cause may be advanced for hearing on the 5th day of May, 1913, and to be submitted on briefs without oral argument.

FRED A. BAKER,
Attorney for Plaintiff in Error.

GRANT FELLOWS,
Attorney General of Michigan,
Counsel for Defendants in Error.

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 1048.

JOHN A. ADAMS,
Plaintiff in Error,
vs.
JAMES RUSSELL, Warden of the State House of Correction and Branch of the State Prison at Marquette, Mich., and The Advisory Board in the Matter of Pardons,
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF THE CASE.

The statutory provisions involved in this case are as follows:

SEDUCTION.

(3 *Mich. C. L.* 1897, *Sec.* 11694.)

"If any man shall seduce and debauch any unmarried woman, he shall be punished by imprisonment in the State prison not more than five years or by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars; but no prosecution shall be commenced under this or the last preceding section after one year from the time of committing the offense."

(*Mich. Public Acts*, 1905, *p.* 268.)

"Sec. 2. The maximum term of imprisonment shall not exceed the longest term fixed by law for the punishment of the offense of which the person sentenced is convicted, and the minimum term of imprisonment fixed by the court shall not exceed one-half of the maximum term of imprisonment fixed by statute: Provided, That where the law prescribing the punishment for the offense of which the convict stands convicted fixes the minimum term of imprisonment, then the minimum term fixed by law shall be the minimum term of imprisonment."

"Sec. 5. Authority to grant parole under the provisions of this act is hereby conferred exclusively upon the Governor in all cases of murder, actual forcible rape, for offenses by public officers in violation of their duties as such officers, and to all persons convicted and serving sentence for conspiracy to defraud public municipalities, or the bribing or attempt to bribe of public officers. In all other cases such authority is hereby conferred upon the Advisory Board in the Matter of Pardons. The Governor and the Advisory Board in the Matter of Pardons acting jointly, shall have authority to adopt such rules as may, by them, be deemed wise or necessary to properly carry out the provisions of this act, and to amend such rules at pleasure: Provided Prisoners, under the provisions of this act, shall be eligible to parole only after the expiration of their minimum term of imprisonment, and prisoners who have been twice previously convicted of a felony shall not be eligible to parole."

"Sec. 6. Applications shall be made to the Governor or to the Advisory Board in the Matter of Pardons upon uniform blanks prescribed by the Governor and the Advisory Board in the Matter of Pardons acting jointly and supplied by the secretary of the Advisory Board in the Matter of Pardons to the wardens or superintendents of the penal institutions named in section one of this act. It shall be the duty of the warden or superintendent, when requested by a prisoner, whose minimum term of imprisonment has expired and is eligible to a parole, to furnish such

prisoner with a blank application for parole. The application shall be filled out and delivered to the warden or superintendent, who shall immediately forward the same to the Governor or to the Advisory Board in the Matter of Pardons, with his recommendation endorsed thereon. Upon receipt of such application and recommendation the Governor or the Advisory Board in the Matter of Pardons shall make such investigation in the matter as they may deem advisable and necessary, and may, in their discretion, grant such application and issue a parole or permit to such applicant to go at large without the enclosure of the prison. The convict so paroled, while at large, by virtue of such parole, shall be deemed to be still serving the sentence imposed upon him, and shall be entitled to good time the same as if confined in prison."

"Sec. 11. At the time of granting parole to any prisoner either by the Governor or the Advisory Board in the Matter of Pardons, they shall each respectively determine the length of time the prisoner shall remain on parole, which shall not be more than four years in any case. After any prisoner has faithfully performed all of the obligations of his parole for the period of time so fixed, and has regularly made his monthly reports as required by the rules providing for his parole, he shall be deemed to have fully served his entire sentence, and shall then receive a certificate of final discharge from the warden or superintendent in whose custody he is. A duplicate copy of such final discharge shall at once be sent to the secretary of the Advisory Board in the Matter of Pardons, who shall file the same in the office of the Governor."

GOOD TIME LAW.

(1 *Mich. C. L.*, 1897, *Sec.* 2112.)

"Sec. 33. The warden shall cause a record to be kept of each and all infractions of the rules of discipline by convicts, with the names of the persons so offending, and the date and character of each offense, which record shall be placed before the board at each regular meeting thereof, and every convict who shall have no infraction of the rules of the prison or the laws of the state recorded against him, shall be entitled

to a reduction from his sentence as follows: During the first and second years of his sentence, five days for each month; during the third and fourth years, six days for each month; during the fifth and sixth years, seven days for each month; during the seventh, eighth and ninth years, nine days for each month; during the tenth, eleventh, twelfth, thirteenth and fourteenth years, ten days for each month; during the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth years, twelve days for each month; and from and including the twentieth year, up to and including the period fixed for the expiration of the sentence, fifteen days for each month. The board may, by general rule, subject to amendment from time to time, prescribe how much of the good time earned under the foregoing provisions a convict shall forfeit for more than one infraction of the prison rules in any month, and for any serious act of insubordination, attempt to escape, or escape, the board may, by special order, take away any portion or the whole of the good time made by any convict up to the date of such offense. On recommendation of the warden the board may, as a reward for specially good conduct, such as aiding officials in cases of insubordination, or attempt at escape, restore to any convict the whole or any portion of the good time lost because of any minor infractions of the rules. The warden, in computing the diminution of time for those convicts now in prison, shall allow them the good time made up to the time this act takes effect in accordance with the provisions of law previously in force, and thereafter it shall be computed in accordance with the provisions of this section. Whenever a convict has been committed under several convictions, with separate sentences, they shall be considered as one continuous sentence in the granting or forfeiting good time: Provided, That a convict who shall be serving a second term in said prison shall be allowed for the several periods in order named above, two, three, four, five, six, seven and eight days as good time, and no more, and if any convict has already served a second term in said prison, he shall be allowed no good time, but shall be held until the full completion of this sentence."

THE CASE OF JOHN A. ADAMS.

On the 3rd day of May, 1909, John A. Adams was convicted in the Recorder's Court for the City of Detroit of the crime of seduction, and sentenced to imprisonment in the State House of Correction and Branch of the State Prison at Marquette, Mich., for not less than two years and a half and for not more than five years (Record, pp. 18-19).

Pending a writ of error, he was released on bail and, omitting the time he was out on bail, his full minimum sentence did not expire until January 29, 1912.

But the reduction in his imprisonment to which he was entitled for good behavior in prison, under the "good time" statute, was a part of his sentence, so that in legal effect he was sentenced for two years and a half, less good time, or five years, less good time.

That a convict has a legal right to reduce his imprisonment by good behavior in prison is the law in Michigan. Any change in the good time law which would deprive him of the benefit of the good time statute in force at the time of his conviction and sentence would be an expost facto law and void (Canfield's case, 98 Mich., 644).

The warden of the Marquette prison furnished Adams with one of the uniform blanks prescribed by the Governor and the Advisory Board, and he filled it out and delivered it to the warden, who forwarded it to the Advisory Board; and that board, December 5, 1911, granted him a parole and fixed the period of its duration (before he was to be entitled to his absolute discharge) at two months from January 29, 1912 (Record, p. 21).

Soon after the parole was granted and made public the Hon. Philip T. VanZile, who had been the prosecuting officer who had secured the conviction of Adams, sent communications to the Advisory Board charging Adams with misconduct before and pending his trial; but all the charges related to things which Adams had done before his conviction (Record, pp. 23-27).

December 12, 1911, the Advisory Board took this action:

> "Moved by Dr. Bradley that the action of the Board taken December 5, 1911, in paroling John Adams, No. 1927, from Marquette be vacated for the reason that the Board is at this date in possession of facts not known at the time of such action" (Record, p. 21).

The parole, which had been delivered to the warden for the prisoner, was recalled and his imprisonment continued (Record, p. 22).

On the 5th day of March, 1912, Adams presented a petition to the Supreme Court of the State praying for a writ of habeas corpus, in which he alleged his further imprisonment to be illegal for the following reasons:

(1) The Advisory Board of Pardons has no jurisdiction or authority to vacate or annul a parole granted by it, the power and authority to retake and return any paroled convict to the prison from which he is allowed to go at large being within the exclusive jurisdiction and discretion of the warden or superintendent of such prison. (2) If the Indeterminate Sentence Act (Public Acts 1905, No. 184, p. 268; Public Acts 1909, p. 293) is construed to confer on the Advisory Board of Pardons power to vacate or annul a parole granted by it without any notice to the convict and without giving him any opportunity to be heard or any opportunity to disprove any fact alleged or charge made against him, then said act is in conflict with the provisions of the Constitution of this State, that cruel or unusual punishments shall not be inflicted, and no person shall be deprived of life, liberty or property without due process of law; and also in conflict with the provisions of the Fourteenth Amendment of the Constitution of the United States, that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction of the equal protection of the laws. (3) If so construed, the convict would be twice punished for the same offense. (4) The Indeterminate Sentence Act and the rules and regulations promulgated thereunder contemplate that a parole will not be vacated or annulled by the commitment and reimprisonment of the convict except when he violates the terms and conditions imposed by his parole or by said act or by said rules and regulations. (5) The term of imprisonment of this respondent has expired."

Instead of issuing a writ of habeas corpus the court, under a statute authorizing it, issued a writ of certiorari to inquire into the cause of detention, and also a common law certiorari to bring before the court the records of the Advisory Board of Pardons.

Returns were made to these writs (Record, pp. 9, 16).

Counsel for Adams filed a traverse of the return of the Advisory Board as follows (Record, p. 52):

STATE OF MICHIGAN—SUPREME COURT.

JOHN A. ADAMS,
Petitioner,
vs.
JAMES RUSSELL, Warden of Marquette Prison, and Advisory Board of Pardons,
Respondents.

The Advisory Board of Pardons having returned that the Board was "influenced in the action taken by them vacating the parole in this case of the said John A. Adams by the facts stated in the communication to said board, under date December 9, 1911, by Hon. Philip T. VanZile, Circuit Judge of the Circuit Court for the County of Wayne, and former prosecuting attorney of said County of Wayne, and who conducted the prosecution in the Recorder's Court of the City of Detroit against said John A. Adams, a copy of which is hereto attached and made a part of this return."

Now comes the said John A. Adams, by Fred A. Baker, his attorney, and categorically and specifically denies all the material facts set up and alleged in the said communication of the said Philip T. VanZile, and he claims the benefit of a demurrer thereto on the grounds that all of the alleged facts occurred before his conviction, and said communication was not made or submitted to the Advisory Board until after the parole was granted.

The said John A. Adams submits that to dispose of the case on the assumption that the facts alleged by said Philip T. VanZile are true would be a violation of the due process

of the law clause of the Fourteenth Amendment of the Constitution of the United States.

FRED A. BAKER,
Attorney for Petitioner.

Lansing, April 2, 1912.

Thereupon, without giving either the State or the prisoner any opportunity to introduce proofs to sustain or to disprove the allegations traversed by the latter, the court heard the arguments of counsel and took the case under advisement.

The Attorney-General made no attempt to sustain the power of Advisory Board of Pardons to vacate or annul a parole without notice to the convict and giving him an opportunity to be heard, but contended that, inasmuch as the full maximum sentence of Adams did not expire until January 29, 1912, the parole granted to him December 5, 1911, was void.

April 15, 1912, the court, in an opinion by Mr. Justice Blair, held that the parole was prematurely granted and void (Adams vs. Russell, 169 Mich., 606).

On the 14th day of October, 1912, John A. Adams presented to the Supreme Court of Michigan his second petition for a writ of habeas corpus (Record, p. 1).

After setting up the previous history of the case, he proceeds to make the following allegations:

12. Your petitioner further shows that he and his counsel inadvertently overlooked the fact that he was entitled, under the laws of Michigan, to a deduction from his minimum sentence for the "good time" accorded to convicts in the prisons of the State.

At the time of your petitioner's conviction and sentence (and ever since then) Section 2112 of the Compiled Laws of Michigan of 1897 was in force, and your petitioner earned and was and is entitled, during the first and second years of his sentence, to five days of good time for each month, and during the third year to six days for each month, making a total of 138 days, so that his minimum sentence of two years and a half expiring January 29, 1912, actually expired under the good time law long before the Advisory Board of Pardons received and acted upon his application for a parole.

13. Your petitioner further shows that the present parole law of this State, providing for the release of convicts on

parole, has been in force since 1905 (Public Acts 1905, p. 268); that down to the decision, April 15, 1912, of the Supreme Court of the State in your petitioner's case, it was the constant practice of the Advisory Board of Pardons to receive and act upon the applications of convicts before and in anticipation of the expiration of their minimum sentences, and to grant paroles from a designated date at or after the expiration of the convict's minimum sentence; that at the time your petitioner's parole was vacated by the Advisory Board of Pardons, and at the time it was held void by the Supreme Court of this State, there were a large number of such paroles outstanding, and there are a large number of such paroles still outstanding, where the convict is at large and his paroled probationary period has not expired, yet the prison authorities, the courts and all other officials in the State have recognized said paroles as legal and valid; and notwithstanding said decision of the Supreme Court of the State, no paroled convict or prisoner (other than your petitioner) has been kept in or returned to prison on the ground that his parole was prematurely granted and void.

Your petitioner, therefore, respectfully submits that the discrimination against your petitioner in the construction and enforcement of said parole law by the State and its authorities is a violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law.

14. Your petitioner has caused his counsel in this case to make a personal examination of the parole record of the Advisory Board of Pardons, from which it appears that between August 1, 1911, and April 15, 1912, there were twenty-four paroles (other than your petitioner's) acted upon and granted before the expiration of the minimum sentence of the respective convicts, and as to seventeen of them the probationary period had not expired October 1, 1912.

A list of said paroles, with the parole numbers; the sentences, the date the paroles were granted, and the dates they were to become operative and the probationary periods were to commence to run, is annexed to this petition as Exhibit E.

14½. That your petitioner and his counsel have been informed and believe, and charge the fact to be, that since said Supreme Court decision, April 15, 1912, down to the present time, October 14, 1912, the Advisory Board of Pardons has

continued to entertain and act upon applications for parole and to grant the same before the minimum sentence of the convicts have expired, the same as had been the constant practice of the board before said decision, and have granted a large number of such paroles which have been issued and are now outstanding.

15. The Advisory Board of Pardons now consists of Dr. James B. Bradley, Nelson C. Rice, DeHull N. Travis and Robert P. Lane, executive clerk, is the secretary of the board; and the office of the board is in the Capitol Building in Lansing.

16. Your petitioner has been advised that his further imprisonment on his said conviction and sentence is illegal, and that the illegality consists in this, to-wit:

(1) The good time law entered into and was a part of the sentence of your petitioner, and therefore his minimum sentence had expired when the Advisory Board of Pardons received and acted upon his application for a parole.

(2) The parole granted to your petitioner December 5, 1911, ordering his release January 29, 1912, was and is a valid warrant or instrument for his discharge.

(3) The Advisory Board of Pardons had no power to vacate or annul the parole granted to your petitioner.

(4) If the Advisory Board of Pardons had power to vacate or annul the parole granted to your orator, it could only do so on notice to him and giving him an opportunity to be heard.

(5) The parole law, as construed and enforced in the case of your petitioner, unduly discriminates against him, and constitutes a denial by the State of that equal protection of the laws guaranteed to all persons within the jurisdiction of the State by the Fourteenth Amendment of the Constitution of the United States.

(6) The vacation of petitioner's parole without notice to him and an opportunity to be heard was a violation of the due process of law clause of the Fourteenth Amendment of the Constitution of the United States.

(7) As petitioner was not guilty of any violation of the conditions of his parole during the two months commencing January 29, 1912, he is now entitled to his absolute discharge.

(8) The reasons stated in petitioner's former petition for a writ of habeas corpus as set forth in the 7th paragraph of this petition are renewed and relied upon.

The Supreme Court of Michigan held said petition for a writ of habeas corpus under advisement until the 18th day of December, 1912, when it granted and entered an order dismissing the petition, but without filing an opinion or otherwise indicating the reasons for its decision (Record, p. 54).

Petitioner sued out a writ of error, which was allowed by Hon. Joseph H. Steere, Chief Justice of the Supreme Court of Michigan, and filed the following (Record, p. 56):

ASSIGNMENTS OF ERROR.

The said John A. Adams, plaintiff in error, in connection with the allowance and filing of the writ of error herein, submits and files the following assignments of error which the said John A. Adams says manifestly appear in the record and proceedings and in the judgment aforesaid and in the refusal of the court to grant the writ of habeas corpus prayed by him, and that he is now imprisoned by the State of Michigan in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and for the following reasons:

1. It is settled law in Michigan that the reduction of sentence allowed to convicts for good behavior in prison enters into and is a part of the sentence, so that the sentence of plaintiff in error was for two years and a half, less the "good time" he might earn, or five years, less good time.

2. The full minimum sentence of plaintiff in error expired January 29, 1912, but he had earned a reduction of 138 days for good behavior, and his actual minimum sentence under the good time law expired long before he was granted his parole of December 5, 1911, to become operative January 29, 1912.

3. The decision of the Supreme Court of Michigan on plaintiff's first petition for a writ of habeas corpus, that his

parole was prematurely granted and was void (169 Mich., 606), was based on an error of fact.

4. Said decision was also an error in law, for it is settled law in Michigan, as shown by a decision of the court by the same judge three days before your petitioner's case was decided, that the strict letter of a statute must give way to the leading idea and purpose of the act and shall not be used to defeat the legislative intent (169 Mich., 599, 600).

5. The first petition of plaintiff in error for a writ of habeas corpus distinctly claimed that his parole could not be vacated without notice to him and an opportunity to be heard.

6. The second petition of plaintiff in error for a writ of habeas corpus shows by proper averment of facts that both before and after he was granted his parole, and after the decision of the Supreme Court on his first petition, April 15, 1912, down to the filing of his second petition, October 14, 1912, the Advisory Board of Pardons continued to grant paroles to convicts before their full minimum sentences had expired where the convict had earned good time.

7. The plaintiff in error is the only convict in Michigan who has been denied the full benefit of a parole granted after his minimum sentence, less good time, has expired; and that as to him, however fair the laws of the State may be on their face, they have been and are being enforced with a heavy hand and an evil eye, amounting to a denial of the equal protection of the laws.

8. The Supreme Court of Michigan also denied to the plaintiff in error the equal protection of the Michigan Habeas Corpus Act, in that it held his second petition from October 15, 1912, to December 18, 1912.

9. Plaintiff in error was not guilty of any breach of the conditions of his parole during the period of probation fixed by it from December 5, 1911 to January 29, 1912,* and he is now entitled to his full discharge.

10. Plaintiff in error has suffered the penalties of the law for his offense, and his further imprisonment is in violation of the guarantees of liberty contained in the Constitution of the United States and the Constitution of Michigan.

Wherefore plaintiff in error prays that the judgment below

*This is a clerical error which is corrected by the context. It should read "from Jan. 29, 1912 to Mar. 29, 1912."

may be reversed and that the Supreme Court of Michigan may be directed to issue the writ of habeas corpus prayed by him, and that unless it is shown on the return of the writ that his parole was obtained by fraud, to discharge the plaintiff in error from any further imprisonment.

FRED A. BAKER,
Attorney for Plaintiff in Error.

I.

It has never been the law, either in England or the United States, that a pardon could be vacated by the executive or the courts because it was improvidently granted. If the prisoner has been detained in prison or, having been released, is reimprisoned, he has a right to sue out a writ of habeas corpus and to plead his pardon; and the only way his discharge can be defeated is to make a return to the habeas corpus that the pardon was obtained by fraud.

If the prisoner denies the fraud, then the court will summarily hear and determine that issue of fact. The Federal Habeas Corpus Act and the Michigan Act both require such a hearing. *Rev. Stat. U. S., Sec.* 760; 3 *Mich. Comp. Laws,* 1897, *Sec.* 9887.

In that way the prisoner is given a full opportunity to be heard on the question of fraud or on any other issue of fact involved in the case.

In *Commonwealth vs. Halloway,* 44 *Pa. St.,* 210, 219, it was held that a habeas corpus may be issued to allow a prisoner to plead his pardon, and the Attorney-General may appear and answer the plea by showing the pardon was fraudulently obtained.

In that case a pardon was held void by the court because it was obtained by fraud.

A parole is a conditional pardon, and in the present case there is no claim or pretense that the prisoner obtained his parole by fraud or has violated its conditions.

And it is clear that the Advisory Board of Pardons had no power to vacate the parole the board had granted to Adams on his application; and it is still more certain that if the board had any such power it could only exercise it by giving Adams notice and an opportunity to be heard.

Delivery to the warden of the prison, though the prisoner is still in jail, is an irrevocable delivery. (*Ex Parte Powell*, 73 *Ala.*, 517.

No subsequent action of the executive can revoke a pardon once tendered and accepted. *Ex Parte Reno*, 66 *Mo.*, 266; *State vs. Nichols*, 26 *Ark.*, 74.

In *Knapp vs. Thomas*, 39 *Ohio St.*, 377, it was held by a majority of the court that a pardon could not be annulled by the courts even for fraud.

II.

The Supreme Court of Michigan erred in holding that the pardon granted Adams was void because his application was received and acted upon before his minimum sentence had expired.

The main object and purpose of the indeterminate sentence and parole statute is to enable the Advisory Board of Pardons to release a convict from confinement as soon as his minimum sentence expires, if the board sees fit to so exercise its discretion.

On any proper construction of the statute the proviso that prisoners "shall be eligible to parole only after the expiration of their minimum term of imprisonment" means that a prisoner is not to be released from prison until his minimum sentence has expired.

It does not mean that his application may not be received and be acted upon by the board in anticipation of the expiration of his minimum sentence, and a parole granted to be operative at that time.

The provision that "It shall be the duty of the warden or superintendent, when requested by a prisoner whose minimum term of imprisonment has expired and is eligible to parole, to furnish such prisoner with a blank application for parole," simply imposes a duty on the keeper of the prison.

It does not say and does not mean that the keeper may not do so before the minimum sentence has expired and in anticipation thereof.

The rule of construction that the letter of a statute should not be used to defeat its main object and purpose prevails in Michigan as well as elsewhere.

A few days before the Adams case was decided the Supreme Court of Michigan in Peninsular Power Co. vs. Secretary of State, 169 Mich., 595, in an opinion by the same learned justice adopting the language of the Supreme Court of Wisconsin, stated the rule as follows:

> "One of the most familiar and safe canons of construction may be stated thus: For the purpose of clearing up obscurities in a law it should be read with reference to the leading idea thereof,—such idea being regarded as such limitation upon particular words and clauses and expansion of others, within the scope thereof, in connection with that of words clearly implied, —and be thus, if reasonably practicable, brought into harmony with such idea."
>
> *State vs. Railroad Commission*, 137 *Wis.*, 80.

Ordinarily the construction of a State statute belongs to the Supreme Court of the State, but in a case like the present it may be necessary to consider the question as having an important bearing on the Federal question whether the State has not deprived a person within its jurisdiction of the equal protection of the laws.

In determining a question of equal protection of the laws it is necessary to determine what the laws of the State are.

III.

It conclusively appearing that the good time earned by the plaintiff in error had so reduced his minimum sentence that the same had expired when the Advisory Board received and acted upon his application, the Supreme Court of Michigan should have granted his second petition for a writ of habeas corpus and discharged him from further imprisonment.

The first decision of the court was based on an error of fact. It was not rendered on a writ of habeas corpus, but upon a statutory writ of certiorari to inquire into the cause of detention. The body of the prisoner was not before the court, and all his counsel could do was to traverse the return of the Advisory Board and claim the protection of the Constitution of the United States.

The second petition, by proper averments, corrected the error of fact, and we are at loss to understand why the writ of habeas corpus should not have issued as prayed.

IV.

The State of Michigan has denied to the plaintiff in error the equal protection of the laws.

It appears by his second petition that both before and since the decision of the Supreme Court of the State, April 15, 1912, the Advisory Board has granted paroles before the full minimum sentences of the convicts have expired, and that the legality of such paroles has never been questioned by any State authority.

This has been done by giving the convicts credit for the good time earned by them, but such credit is denied the plaintiff in error.

This, we submit, is an application and administration of the law with an evil eye and an unequal hand, and brings the case within Yick Wo vs. Hopkins, 118 U. S., 356.

V.

The King, the President, the Governor of a state, or a Board of Pardons, have full power to make an investigation of all the circumstances surrounding the offense, and the criminal record of any convict seeking executive clemency; but if an absolute pardon, or a conditional pardon, or a parole, is once granted there is absolutely no way of getting rid of it, except by showing, after notice to the prisoner and giving him an opportunity of making a defense, that it was fraudulently obtained.

An attempt was made in some of the cases we have cited to make use of the English statute of 27 Edward III, C. 2, which provided:

> "That from henceforth in every charter of pardon of felony, which shall be granted at any man's suggestion, the said suggestion and the name of the man that maketh the suggestion, shall be comprised in the same charter, and if after the same suggestion be found untrue, the charter shall be disallowed and holden for

none; and the justice before whom such charters shall be alleged, shall inquire of the same suggestion, and that as well of charters granted before this time as of charters which shall be granted in time to come; and if they find them untrue then they shall disallow the charters so alleged, and moreover shall do as the law demandeth."

But all English statutes were repealed in Michigan in 1810, 1 *Mich. Territorial Laws, p.* 210, *and p.* 900, and therefore resort cannot be had to 27 Edward III, even if it could be of some use in the present case.

John A. Adams was granted a parole, and the Advisory Board of Pardons, without any authority so to do and without notice to Adams and giving him an opportunity to make a defense, vacated and annulled it.

The charges made against Adams all related to crimes or misconduct before his conviction, and the Supreme Court of the state when attention was called by formal petition to the fact that the decision of the court, holding the parole void, was based on an error of fact, refused to grant a writ of habeas corpus, on which Adams could be heard on the facts and the law.

It further appears that the Advisory Board of Pardons has uniformally exercised the power to grant paroles, after the expiration of the minimum sentences of the convicts less the good time earned by them; and that such is the law of the state; and that Adams is denied the protection of that law.

We respectfully submit that the state of Michigan is depriving the plaintiff in error of his liberty without due process of law, and is denying him the equal protection of the laws; and that the order and judgment of the Supreme Court of Michigan, denying the petition for a writ of habeas corpus should be reversed, and the court directed to issue the writ as prayed, and if on the return of the writ it is not shown that the parole was obtained by fraud to discharge the prisoner.

It is possible that on a writ of error in a habeas corpus case this court can directly discharge the prisoner, but assuming that the usual course is to give directions to the court below, we merely suggest the question.

FRED A. BAKER,
Counsel for Plaintiff in Error.

Office Supreme Court, U. S.
FILED.
MAY 5 1913
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1048.

JOHN A. ADAMS, PLAINTIFF IN ERROR,

vs.

JAMES RUSSELL, WARDEN OF THE STATE HOUSE OF CORRECTION AND BRANCH OF THE STATE PRISON, AT MARQUETTE, MICHIGAN, AND THE ADVISORY BOARD IN THE MATTER OF PARDONS, DEFENDANTS IN ERROR.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

FRED A. BAKER,
Counsel for Plaintiff in Error.

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REPLY BRIEF FOR PLAINTIFF IN ERROR.

I.

The Indeterminate Sentence and Parole law did not repeal or modify in any way the Good-Time law.

This is shown by the last clause of section 6, which distinctly recognizes the Good-Time law as continuing in force. It reads:

> "The convict so paroled while at large shall be deemed to be still serving the sentence imposed upon him, and shall be entitled to good time the same as if confined in prison."

II.

The good time a convict may earn reduces his minimum sentence as well as his maximum sentence.

For good behavior in prison the convict can earn during the first and second years of his imprisonment a reduction of five days a month or sixty days in all, and during the third and fourth years, six days a month, and so on.

Good time once earned by a convict cannot be taken from him, unless he is subsequently guilty of an infraction of the rules of the prison.

III.

The order of the Supreme Court of Michigan refusing to issue the writ of habeas corpus cannot be sustained on the ground that the court simply changed its construction of a State statute.

1. The court did not file an opinion and it cannot be assumed that it overruled its construction of the Good-Time law in Canfield's case, 98 Mich., 644.

2. There is an insurmountable objection to any such view of the case.

When a prisoner under an existing statute, and the decisions of the State Supreme Court thereon, has actually earned a reduction of his sentence, neither the State legislature nor the State court can deprive him of the benefit thereof.

The Constitution of the United States prohibits the States from passing *ex post facto* laws. If the Supreme Court of Michigan did overrule Canfield's case and hold that the Good-Time law was not a component part of the sentence imposed on John A. Adams, it thereby necessarily turned the statute into an *ex post facto* law, and enforced it as such.

As a matter of fact the court let Canfield's case stand as the correct construction of a very plain statute, and it still is the law of the State.

IV.

The learned Attorney General is mistaken when he says that since the first decision of the Supreme Court of the State in Adams' case (169 Mich., 606) the Advisory Board of Pardons has ceased to receive and act upon applications for parole before the expiration of the convict's full minimum sentence.

The 14½ paragraph of the petition for the writ of habeas corpus (Record, p. 5) expressly alleges the contrary to be the fact, and the petition prays "that an ancillary common-law writ of certiorari may be allowed and issued directing the Advisory Board of Pardons to certify into this court a complete list of all the paroles granted by the board before the minimum sentences of the convicts had expired" (*Id.*, p. 6).

This mistake of the Attorney General probably explains how he came to ignore the fifth ground of illegality alleged in the petition and the sixth and seventh assignments of error (Record, pp. 6 and 57) and the fourth and fifth subdivisions of the brief for plaintiff in error.

V.

The first decision of the State Supreme Court cannot be regarded as *res adjudicata* for two reasons:

1. That decision was rendered on a writ of certiorari to inquire into the cause of detention and an ancillary writ to the Advisory Board. On these writs the records in the case could be examined, but no issues of fact could be raised, and the prisoner was not brought before the court, so he could raise an issue of fact by his own oath or inform the court that he had earned good time.

2. The second petition for a writ of habeas corpus was the only practical and efficient way of obtaining a rehearing on the ground that the first decision was based on an error of fact. The relief sought is like that accorded on a writ of error *coram nobis*.

We respectfully submit that the plaintiff in error was entitled to a hearing on the allegations of his petition and that the court below should be directed to issue the writ of habeas corpus as prayed.

FRED A. BAKER,
Counsel for Plaintiff in Error.

The Supreme Court of the United States

[redacted]

Plaintiff in Error

vs.

[redacted]

Defendants in Error

BRIEF FOR DEFENDANTS IN ERROR

[redacted]

Defendants in Error

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Supreme Court of the United States.

JOHN A. ADAMS,
Plaintiff in Error,

vs.

JAMES RUSSELL, WARDEN OF THE STATE HOUSE OF CORRECTION AND BRANCH OF THE STATE PRISON AT MARQUETTE, MICHIGAN, AND THE ADVISORY BOARD IN THE MATTER OF PARDONS,
Defendants in Error.

October Term, 1912.
No. 1048.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

In order that this Court may have before it the manner in which the questions involved in this case are presented, we desire to make a brief statement relative to the procedure in the State court.

The plaintiff in error was convicted in the Recorder's Court of the City of Detroit of the crime of seduction and was sentenced under the Indeterminate Sentence Law of the State to the State House of Correction and Branch of the State Prison at Marquette, Michigan, of which institution defendant in error, Russell, is the Warden. The maximum sentence was five years, the minimum two and one-half years, with a recommendation by the trial judge of the maximum sentence.

Before the plaintiff in error had served his minimum term

of imprisonment, he made application to, and was granted an alleged parole by the defendant in error, The Advisory Board in the Matter of Pardons. Within a few days after the granting of the alleged parole the Pardon Board attempted to rescind such parole. The plaintiff in error applied to the Supreme Court of Michigan for a writ of Habeas Corpus and that tribunal granted a writ of certiorari under the statute to inquire into the cause of detention, and also a common law writ of certiorari to bring the record of the Advisory Board in the Matter of Pardons before the court. This proceeding was heard in the court of last resort of this State, on the second day of April, 1912, and was determined on the 15th day of the same month. It was conceded upon that hearing by the Attorney General, that the Pardon Board could not revoke the parole under the facts submitted in that case, but it was contended that under a proper construction of the Indeterminate Sentence Law of the State, the action of the Pardon Board in granting the parole before the expiration of the minimum term of imprisonment of plaintiff in error, was premature, without jurisdiction, and void. In this contention the Attorney General was sustained, and the Court determined that the right of the plaintiff in error to apply for a parole did not accrue until he had served the minimum time fixed in his sentence. Inasmuch as this opinion states the facts, and for the further reason that it should be before the Court in convenient form, we here quote it:

Re Adams vs. Russell, 169 Mich. 606:

> "May 3, 1909, petitioner was convicted in the Recorder's Court of the City of Detroit of the crime of seduction, and upon the same day was sentenced by Judge Connolly to imprisonment in the Marquette prison for the minimum term of two and one-half years and the maximum term of five years; the Court recommending that he serve the maximum term. The sentence was imposed under Act No. 184 of the Pub-

lic Acts of 1905, providing for indeterminate sentences. May 15, 1910, petitioner was released from said prison by an order of this Court made May 13, 1910, admitting him to bail. August 20, 1910, petitioner was returned to prison; this Court having in the meantime affirmed his conviction and commanding said warden "to receive and safely keep said defendant for a period equivalent to said unexpired portion of said sentence." December 5, 1911, the Advisory Board in the Matter of Pardons acted upon an application for parole which had been made by petitioner under the indeterminate sentence law, and voted to grant him a parole for the period of two months, the parole not to take effect, however, until the 29th day of January, 1912, and upon the same day a written parole, signed by the Board, was handed to the warden of the prison. December 14, 1911, the Advisory Board in the Matter of Pardons, by resolution, rescinded the previous order granting a parole to petitioner, and wrote the warden to return the written parole to the office of the Board. December 17, 1911, the warden, in compliance with the request of the Board, returned the parole to the office of the Board, where it now remains. March 5, 1912, Adams applied to the Supreme Court for a writ of habeas corpus. The Court granted a writ of certiorari under the statute (section 9889) to inquire into the cause of detention, and also a common law writ of certiorari to bring the record of the Advisory Board in the Matter of Pardons into the case before the Supreme Court.

Counsel for the petitioner contends that the Advisory Board in the Matter of Pardons has no jurisdiction or power under the statute to vacate a parole once granted by it. The power to vacate a parole by the recommitment of the prisoner is vested in the warden, subject to the approval of the advisory board. That Board can disapprove of the re imprisonment of

a paroled convict; but it cannot itself vacate the parole, or order the convict to be re-committed. It is substantially conceded by the Attorney General that, if the advisory board had jurisdiction and authority to grant the parole at the time it acted, it could not revoke it upon the facts appearing in this case; but he argues that since at the time the Board acted upon the application the minimum term of the prisoner had not expired, and would not expire until the 29th day of January, 1912, the Board had no jurisdiction to grant the parole.

Section 5 of Act No. 184, Pub. Acts 1905, provides that:

"Prisoners, under the provisions of this act, shall be eligible to parole only after the expiration of their minimum term of imprisonment, and prisoners who have been twice previously convicted of a felony shall not be eligible to parole."

Section 6 of the act, as amended in 1909, provides that applications shall be made upon uniform blanks to be furnished the wardens, etc., and that:

"It shall be the duty of the warden or superintendent, when requested by a prisoner *whose minimum term of imprisonment has expired and is eligible to a parole*, to furnish such prisoner with a blank application for parole. * * * Upon receipt of such application and recommendation the Governor or the Advisory Board in the Matter of Pardons shall make such investigation in the Matter as they may deem advisable," etc. Act No. 134, Pub. Acts, 1909.

The prisoner is not entitled to parole as a matter of right, and whether the Board would grant a parole would naturally depend, to a large extent, upon his conduct during the minimum term and the recommendation of the warden required to be indorsed upon his application. It is obvious that, if the Board can grant paroles in advance of the expiration of the

minimum term, the conduct of the prisoner may so change after the granting thereof as would make it highly improper to grant him a parole after the expiration of such minimum term. We are satisfied that it was not the intention of the legislature to confer any such power upon the Board, and that the provisions quoted clearly negative such intention. We hold, therefore, that the action of the Board conferred no rights upon the petitioner, and its rescission of its action worked no injury to him.

The writ is quashed, and the prisoner remanded."

No application was made by the plaintiff in error for a rehearing, no writ of error was sued out of this Court, and the judgment is unappealed from and is still in force.

It should be said in passing that plaintiff in error attempted to raise a federal question in that case, as he insisted that the action of the Pardon Board in rescinding its order without notice to him operated to deprive him of his liberty without due process of law; but it should further be said that the Attorney General of the State conceded that proposition to be true, and the Court so held, but, as indicated before, determined the case not on the federal question but upon the construction of the indeterminate sentence law of the State and held that the proceedings of the Pardon Board in granting the parole in the first instance was a nullity.

On the 14th of October, 1912, plaintiff in error filed another petition for a writ of habeas corpus setting up the same facts as in his former application and urging as an additional ground for the allowance of the writ (paragraph 12, petition for mandamus, R. 4) "Your petitioner further shows that he and his counsel inadvertently over-looked the fact that he was entitled under the laws of Michigan to a deduction from his mimimum sentence for the "good time" accorded to convicts in the prisons of the State," and he insisted in the present petition that the indeterminate sen-

tence law of Michigan should be so construed as that the "minimum term of imprisonment" should not be construed to mean the minimum term of imprisonment imposed by the Court, but should be construed to mean such minimum term as fixed by the Court less good time.

The application for this writ was denied by the Court without opinion, so that we are unable to say whether the writ was refused because the court entertained views adverse to the petitioner upon the federal question (which is hardly within the bounds of possibility as the Court in its former hearing had sustained the position taken by the plaintiff in error upon the federal question and had, in effect, held that the revocation of his parole without notice to him was depriving him of his liberty without due process of law), or whether the Court was of the opinion that the question should be raised by an application for a re-hearing in the former case, or whether the Court refused the writ upon the ground that the first case was *res ad judicata*, or whether it refused the writ upon the ground that the first decision settled the law of the case and would be binding upon a second application. Accordingly the record does not disclose that the decision of the Court of last resort of the State was adverse to the plaintiff in error on the federal question here involved.

The constitutionality of the indeterminate sentence law of Michigan was not assailed, either in the former or in this case, and the question involved, after the concession of the State, was the construction of that act and what powers were given by it to the Pardon Board without the question being raised that the act itself was invalid, the federal question raised on the first hearing being that plaintiff in error had been deprived of due process of law by the revocation of his parole without notice. The additional allegation in the present petition that plaintiff in error and his counsel had overlooked certain facts was not deemed by the Court sufficient to call for the issuance of a second writ.

ARGUMENT.

It is our purpose to insist:

1st. That there is no federal question involved upon this record.

2nd. That Plaintiff in error was not deprived of his liberty without due process of law by the construction put upon the "indeterminate sentence law" and the "good time law" of the state by the state court, and that he was not denied the equal protection of the laws of that state.

3rd. That good time can for any purpose be deducted only from the maximum term.

I.

The primal question for consideration here is whether any federal question is presented upon this record. No opinion having been filed in this case we apprehend that it can hardly be said that the Court must have decided adversely to the contention of the plaintiff in error upon the federal question. This would be an extremely violent presumption in view of the fact that in the former case it was conceded by the State, and held by the Court, that the alleged parole of the plaintiff in error is valid could not be revoked without notice to him. It was within the province of the Court to hold, and it did so hold in the former case, that the plaintiff in error was not eligible to apply for a parole until the minimum sentence fixed by the Court had expired. It was within the province of the Court in the construction of the indeterminate sentence law of Michigan to construe the following language found in Section five "Prisoners under the provisions of this act shall be eligible to parole only after the expiration of their minimum term of imprisonment" (Act 184, Public Acts of Michigan for 1905), to mean that a prisoner in order to be eligible to parole must have served the minimum term fixed by the Court, in this case, two and one-

half years. It was clearly within the province of the Court of last resort of the State of Michigan in construing this statute to construe it to mean that the plaintiff in error was not eligible to parole until he had served fully two and one-half years. So far as the Court did determine the question, it determined that the plaintiff's right to apply for a parole did not begin to run until the 29th day of January, 1912, and that any action of the Pardon Board prior to that date was premature, without jurisdiction, and void. We then have the situation of a construction, so far as any opinion is before us, from the Court of last resort of Michigan, that Adams' right to apply for a parole commenced to run on the 29th day of January, 1912.

It seems to us clearly that this is a construction of a local statute and is within the ruling laid down by this Court, in

> Great Western Telegraph Co. vs. Purdy, 162 U. S. 329.

It was there said by this Court:

> "The question at what time the cause of action accrued in this case within the meaning of the Statute of Limitations of Iowa, was not a federal question but a local question upon which the judgment of the highest court of the State can not be reviewed by this Court." (339)

In that case it was held that the question as to when the cause of action accrued was a local one, and the question involved in the instant case is when the right to apply for a parole accrues under the Michigan Indeterminate Sentence Law. The two cases are, to our mind, identical.

We next call attention to the case of

> Phoenix Insurance Co. vs. Gardiner, 11 Wall. 204;

It was there said:

"Now we have repeatedly held that the construction of State Statutes belongs to the State courts, and is not a federal question which we can revise in a writ of error to a State court. It is true, if the State court gives such a construction to a State statute as to make it conflict with the Constitution or laws of the United States, and sustains its validity after giving it such construction, and thereby deprives a party of his rights under the said Constitution or laws, then a federal question is raised, and we can review the decision on the point of the validity of the statute. But in this case it does not appear what construction was given to the State statute. All that can certainly be gathered from the record is, that the State statute, in the opinion of the Court of Appeals, did not oblige the county treasurer to issue county certificates to the plaintiffs, in this particular case. For ought that appears, the Court may have regarded the statute as only furnishing a remedy for cases expressly adjudicated upon. Such a construction of the statute is not without plausibility, and was insisted upon by the treasurer in his answer to the alternative writ.

Had the State courts decided against the right of the plaintiffs, and had it so appeared by the record, the jurisdiction of this Court would have attached to the case. But that does not appear. It only appears that they have decided that the plaintiff has no remedy under this statute. Its right to recover the illegal tax is undisputed, but not to recover it in this way."

So, in the case at bar, the Court held when the question was presented before, that while the plaintiff in error had a right to apply for a parole and the Board of Pardons might grant the prayer of his petition, that he did not have a right to apply for a parole at the time he did, and that the purported granting of the same by the Pardon Board was premature and void.

Lloyd vs. Matthews, 155 U. S. 222;

In this case it was said:

> "The Court of Appeals was left, therefore, to construe the parts of the Ohio laws that were pleaded as it would local laws; and it is settled that under such circumstances, where the validity of a State law is not drawn in question, but merely its construction, no federal question arises. As was remarked in Glenn vs. Garth, 147 U. S. 360, 368: 'If every time the courts of a state put a construction upon the statute of another state, this Court may be required to determine whether that construction was, or was not, correct upon the ground that if it were concluded that the construction was incorrect, it would follow that the State courts had refused to give full faith and credit to the statutes involved, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated.'" (227)

The Grand Gulf R. R. & Banking Co. vs. Marshall, 12 How. 165;

In this case it was said:

> "But in order to give this court jurisdiction the record must show, that the point was brought to the attention of the State court and decided by it. It is not sufficient that the point was in the case, and might have been raised and decided. It must appear that the validity of the State law was drawn in question and the judgment founded upon its validity. This is evidently the meaning of the 25th section of the act of 1789 which gives the writ of error. And the reason is obvious. The party is authorized to bring his case before this Court, because a State court has refused to him a right to which he is entitled under the Constitution or laws of the United States. But if he

omits to claim it in the State court there is no reason for permitting him to harass the adverse party by a writ of error to this Court, when, for anything that appears in the record the judgment of the State court might have been in his favor if its attention had been drawn to the question. The rule upon this subject is distinctly stated in the case of Armstrong and others vs. The Treasurer of Athens County, 16 Pet. 285, where the court said, that when the proceeding is under the law of Louisiana it must be shown that the point arose and was decided, either by the statement of facts, and the decision as usually set out in such cases by the Court, or it must be entered on the record of the proceedings in the appellate court, (in cases where the record shows that such a point may have arisen and been decided,) that it was in fact raised and decided. In suits at common law the question is usually presented by the pleadings or by an exception to the opinion of the Court.

In the case before us the proceedings were under the Louisiana laws. And the opinion of the Court, according to the practice in that state, is entered on the record, and sets forth the principles of law upon which the decision was made. And it appears that the decision turned upon the construction (not the validity) of the act of Mississippi of 1840; and upon a question of merely local law, concerning the right by prescription claimed by the trustees.

Nothing is said in relation to the constitutionality or validity of this act of Mississippi, and the opinion of the Court clearly shows that no such question was raised or decided.

This writ of error must therefore be dismissed for want of jurisdiction."

Central Land Co. vs. Laidley, 159 U. S. 103;

In this case the rule was laid down (we quote from the syllabus):

> "This court has no jurisdiction of a writ of error to a State court on the ground that the obligation of a contract has been impaired when the validity of the statute under which the contract was made is admitted and the only question is of its construction by that Court."

The validity of the Indeterminate Sentence Law in the case at bar is admitted. The only question which can possibly be raised on this record is whether under that law, the plaintiff in error had the right to apply for a parole, and whether the Pardon Board had the right to grant a parole before the plaintiff in error had actually served full two and one-half years, the minimum sentence. Clearly, the question is a construction of the language of a State statute, not subject to review in this Court.

See also:

> Baltimore & Potomac R. R. Co. vs. Hopkins, 130 U. S. 210;
> Lambert vs. Barrett, 159 U. S. 660;
> Hooker vs. Los Angeles, 188 U. S. 314.

II.

It is urged that the plaintiff in error and his attorney overlooked the fact that the legislature had provided a "good time" statute as applied to convicts serving time in the penal institutions of the State, and that the indeterminate sentence law should have read unto it the "good time" act, and that the Court should construe the indeterminate sentence law and the "good time" act together. It seems, however, that this is a question of the construction of a local act by the court of last resort of the State, and that the refusal (if the Court did refuse) upon this application to so

construe the indeterminate sentence law does not raise a federal question.

As we have indicated before, the validity of the indeterminate sentence law is not assailed. It is not urged, and cannot be urged that the indeterminate sentence law of the State is invalid. The question then is, can this Court review the determination by the State Court as to the meaning of a Michigan statute and its proper construction, what other statutes should be read into it, and the powers conferred under it? Can such decision be reviewed upon the theory that a federal question is involved? The Court declined to entertain the present petition, and it is therefore assumed by plaintiff in error that the Court by declining to entertain it, determined the federal question and determined it adversely to him. There being no opinion filed upon the present application, we are unable to say whether the Court construed the indeterminate sentence law as being an independent separate act, unaffected by the "good time" statute, or whether the court declined this application because plaintiff in error should have moved for a rehearing of the former case on the grounds of misinformation or oversight of himself and his counsel with reference to the "good time" statute. Be that as it may, we resolve ourselves back to the controlling proposition, and that is, whatever view the Court entertained, its conclusion was and is, what is the proper construction of a Michigan statute, and with that conclusion this Court cannot deal.

The indeterminate sentence law of Michigan expressly provides in its second section, "The maximum term of imprisonment shall not exceed the longest term fixed by law for the punishment of the offense of which the person sentenced is convicted, and the minimum term of imprisonment fixed by the Court shall not exceed one-half of the maximum term of imprisonment fixed by the Statute." The proviso in section five reads as follows:

"Provided, prisoners under the provisions of this act

shall be eligible to parole *only* after the expiration of their minimum term of imprisonment."

Section six, so far as applicable here provides: "It shall be the duty of the warden or superintendent when requested by a prisoner whose *minimum term of imprisonment* has expired, and is eligible to a parole, to furnish such prisoner with a blank application for parole." We are impressed that the "good time" law of the State is not a part of and should not be read into the indeterminate sentence law. The "good time" act was passed many years prior to the passage of the indeterminate sentence law. Under the "good time" act, the prisoner was entitled to certain allowances, provided he lived up to the rules of the prison, and it was an inducement to him to so demean himself that he should have his good time deducted from the sentence, and the sentence to that extent reduced. The purpose of this act, it can be seen, was to induce the best conduct possible on the part of the prisoner. The indeterminate sentence law is designed to reach the same result. Instead of saying to the prisoner, if your conduct is exemplary, a certain percentage of your sentence shall be wiped out, the indeterminate sentence law says to the prisoner, if your conduct is exemplary, after you have served one-half of the maximum sentence fixed by the law, you will be eligible to be set at large, subject to certain restrictions. The "good time" law promises to the convict a few days off his time for good conduct. The indeterminate sentence law promises that the convict may go at large subject to certain restrictions after he has served one-half of the maximum term. They are both for the same purpose, viz.: to induce prisoners to live up to the rules of the penal institution, and in our judgment the indeterminate sentence law supersedes (except as applied to the maximum term) the former good time act. But as we have indicated heretofore, this question must be a question for the Supreme Court of the State. The most that can be contended for by the plaintiff in error is that the Court in the instant case

in refusing his petition has determined that his good time could not be counted. It is urged that the court of last resort of the State in a former opinion had held that the "good time" law entered into every sentence, but the fact that the holding in the instant case differs from former holdings of the court of last resort does not make the question a federal question.

Patterson vs. Colorado, 205 U. S. 454, 460;

At the bottom of the last cited page, it is said by this Court:

> "It is argued that the decisions criticised, and in some degree that in the present case, were contrary to well-settled previous adjudications of the same court, and this allegation is regarded as giving some sort of constitutional right to the plaintiff in error. But while it is true that the United States courts do not always hold themselves bound by State decisions in cases arising before them, that principle has but a limited application to cases brought from the State courts here on writs of error. Except in exceptional cases, the grounds on which the Circuit Courts are held authorized to follow an earlier State decision rather than a later one, or to apply the rules of commercial law as understood by this Court, rather than those laid down by the local tribunals, are not grounds of constitutional right, but considerations of justice or expediency. There is no constitutional right to have all general propositions of law once adopted remain unchanged. Even if it be true, as the plaintiff in error says, that the Supreme Court of Colorado departed from earlier and well-established precedents to meet the exigencies of this case, whatever might be thought of the justice or wisdom of such a step, the Constitution of the United States is not infringed. It is unnecessary to lay down an absolute rule beyond the

possibility of exception. Exceptions have been held to exist. But in general the decision of a Court upon a question of law however wrong and however contrary to the previous decisions, is not an infraction of the Fourteenth Amendment merely because it is wrong or because earlier decisions are reversed."

So we say here that even though earlier cases in the Supreme Court of the State have held that the "good time" law should be read into the indeterminate sentence act and that had been the universal line of decisions, if in the instant case the Court held otherwise, it would not raise a federal question.

It is urged by the palintiff in error that the Pardon Board of the State had issued paroles to prisoners prior to the service of one-half their time, and in Exhibit "E," page 53 of the record is given a list of those paroles. While it is set forth that paroles had been granted to convicts since the decision in the 169th Mich. an examination of the Exhibit (E) found on page 53 of the record shows that the last parole therein granted which was without the power of the Board under the holding in the Adams' case, was on the 11th of April, 1912. The decision in the Adams' case was handed down by the court of last resort April 15, 1912. It will be observed that even though the Pardon Board prior to the decision in that case exceeded its authority in other cases, the exhibit above mentioned shows that it has not done so since. But as was said by this Court in

Backus vs. Fort Street Union Depot Company, 169 U. S. 557, 571:

"The question is not presented of a distinct ruling by a State court that one party is entitled to certain rights and the benefits of certain modes of procedure, and that another party similarly situated is not entitled to them. An act of the legislature which in terms gave to one individual certain rights and denied

to another similarly situated the same rights might be challenged on the ground of unjust discrimination and a denial of the equal protection of the laws. But that does not prevent a legislature, which has established a certain rule of procedure, and continued it in force for years, from subsequently repealing the act and establishing an entirely different mode of procedure. In other words, there is no absolute right vested in the individual as against the power of the legislature to change modes of procedure. And a similar thought controls where the courts of the State have construed a statute as prescribing one form of procedure, and parties have acted under that construction, and then subsequently the same court has held that the statute was theretofore misconstrued, and really provided a different mode of procedure. This last adjudication cannot be set aside in the federal courts on the ground of an unjust discrimination or a denial of the equal protection of the laws."

Upon this record as made and an examination of Exhibit E, it must be apparent to the Court that prior to the decision of the Supreme Court of the State of Michigan on April 15, 1912, the Pardon Board misconceived its powers and proceeded upon the theory that it had the right to use its judgment as to when a man should be paroled, and that it did parole prisoners prior to the completion of one-half of the maximum term. The record discloses, however, that since the court of last resort of the State spoke on the subject the Board has abandoned that practice. But be that as it may, the indeterminate sentence law provided a uniform course for all convicts. None of them were eligible to parole before they had served the minimum sentence. That was the law of procedure of the State and due process of law in the State is and must of necessity be regulated by the laws of procedure of the State.

III.

The "Good Time" statute is not subject to the construction that a good time allowance should apply to the minimum term. The so-called "good time" law is set forth on pages 3 and 4 of the brief for plaintiff in error. This provides in part that: "Every convict who shall have no infraction of the rules of the prison or the laws of the State recorded against him, shall be entitled to a reduction from his sentence" etc. An examination of the language of the entire statute makes it clearly apparent that it was the intent of the legislature to authorize thereby the discharge of a convict when the good time earned, together with the time actually served equals the time fixed by the sentence. The "sentence" in the case at bar was imprisonment for five years. Plaintiff in error has no vested right to a parole as this is a discretionary matter vested in the Pardon Board and Governor. If he is entitled to good time, it simply operates to reduce the maximum period of time for which he can be held under the sentence of the Court.

In Re Kness 58 Kans. 705.

All of the cases which have been examined indicate the correctness of the rule above set forth. This is the rule recognized in ex parte Dalton 49 California, 462. In this case, Dalton was sentenced under two separate charges, each sentence being for ten years, the second term to begin upon the date of the expiration of the first. It was contended that the credits to which he was entitled, earned during the first term, should be deducted from that term. It was the contention of the Attorney General that the deduction for good behavior should be allowed only from the whole number of years for which the prisoner was sentenced. The statute governing in that case authorized credits to be deducted from "the entire term of penal servitude to which he has been sentenced." There is, however, no distinction in effect be-

tween the language of that statute and the language of the Michigan statute, as we will herein point out that the only effect of prescribing the minimum term is to fix some definite time at which the convict is entitled to make application for a parole. The Court in the above case denied the contention of the prisoner and said:

> "The prisoner in this case has been convicted of two offenses, for each of which he has been sentenced to suffer imprisonment in the State Prison for ten years, making twenty years in all as the 'entire term' to which he has been sentenced. The Court is of the opinion that in such a case 'the entire term of penal servitude,' within the intent of the statute, is twenty years. Each period of ten years is but a part of the entire term, and the second follows the first without any hiatus. Whatever deduction is to be made for good behavior, is not to be taken from the beginning or the middle, but from the end of the entire term. We think the prisoner must be remanded, and it is so ordered." (465)

Good time upon good time cannot be expected or computed.

Woodward vs. Murdock, 124 Ind. 439.

The rule universally accepted is that in determining when a term of imprisonment will expire the good time earned added to the time served and equaling the maximum sentence is conclusive.

Opinion of Justices 79 Mass. (13 Gray) 618.

The construction for which counsel for plaintiff in error contends would mean that at the end of each month during the first and second years of his sentence plaintiff in error was entitled as a matter of right to five days and with the

amount of good time deducted from the month would leave twenty-five days, from the end of which time the second month would begin, and so on throughout the first and second years. During the third and fourth years the same illustration would be true, except that the number of days to be deducted from each month would be six. Stated differently counsel for plaintiff in error argues that the good time which as shown herein can be counted only upon the maximum period of sentence, should be held applicable to the minimum period and operates to shorten the duration thereof. This contention is not sound.

In Re Kness 58 Kans. 705.

The statute considered in the above case is very similar to the Michigan statute. In accordance with the Kansas statute, the convict is entitled to a credit of three days for each month of the first year, six days for each month of the second year and eight days for each month for the remainder of the sentence. It was contended in this case that the good time should be computed at the end of each calendar month. The Court in denying the above contention said:

> "In behalf of the petitioner it is claimed that, when he has observed the rules for the first month, the credit of three days is to be given, and that this good time deducted from the month would leave twenty-seven days, from the end of which time the second month should begin, and so on throughout the year. The statute does not warrant this interpretation. The credit is only given for each month that he shall obey the rules of the Penitentiary. As the term of the sentence is reckoned by calendar time, evidently the legislature intended that credit should be given for and at the end of each calendar month. If the claim of the petitioner were upheld, we would have three grades of months: In the first year, the month would be sub-

> stantially twenty-seven days long, in the second, it would be twenty-four days long, and in the third, and thereafter, it would be twenty-two days long. It is clear that no such shifting basis was intended, but that credit is to be given for and at the end of each month of good conduct, and when the good time earned, together with the time actually served, equals the time fixed by the sentence, the convict is entitled to a discharge." (707)

We submit that both upon the facts and law, the opinion of the Michigan Supreme Court is right. The question is one largely of jurisdiction. The attempted action upon the part of the Pardon Board in granting a parole was void. Counsel for plaintiff in error would inject life into that which never existed. Section 6 of the Michigan indeterminate sentence law set forth on pages 2 and 3 of the brief for plaintiff in error provides in part that: "It shall be the duty of the warden or superintendent, when requested by a prisoner, whose maximum term of imprisonment has expired and is eligible to parole, to furnish such prisoner with a blank application for parole." Therefore, the application of plaintiff in error to the Pardon Board for a parole was premature, as his minimum term of imprisonment had not expired. The one and sole purpose of providing for a minimum term or sentence, so far as it affects plaintiff in error, is to fix a period of incarceration which must be served, and before the expiration of which the Pardon Board has no authority to act. The inconsistency in the position taken by counsel for plaintiff in error lies in the fact that he is attempting to build rights upon an attempted act that is, and was absolutely void; that has no significance and is without warrant in law. The minimum term of sentence in question did not expire until January 29, 1912. The alleged parole was issued December 5, 1911. Suppose the conduct of plaintiff in error had been such as to work a forfeiture of all of his good time prior to January 29, 1912. This is possi-

ble under the Michigan statute. The good time statute provided in part that: "The Board may, by general rule, subject to amendment from time to time, prescribe how much of the good time earned under the foregoing provisions a convict shall forfeit for more than one infraction of the prison rules in any month, and for any serious act of insubordination, attempt to escape, or escape, the Board may, by special order, take away any portion or the whole of the good time made by any convict up to the date of such offense."

Is it not clear that the conduct of plaintiff in error might work a forfeiture of all of his good time prior to January 29, 1912, the date of expiration of the minimum term of sentence? In view of the contention of counsel for plaintiff in error, what would be the result, if such a circumstance were presented? It would mean that the prisoner would be entitled to his discharge under the parole notwithstanding the fact that all of his good time had been taken away. It is believed that this illustration clearly discloses that the Pardon Board did not have authority or jurisdiction to entertain an application for a parole prior to the expiration of the full minimum term or sentence.

Referring again to the indeterminate sentence law, set forth on pages 2 and 3 of brief for plaintiff in error, section 5 provides in part that: "Prisoners under the provisions of this act shall be eligible to parole only after the expiration of their minimum term of imprisonment, and prisoners who have been twice previously convicted of a felony shall not be eligible to a parole."

The minimum term of imprisonment in this case was clearly two and one-half years. If it means other than two and one-half years it becomes necessary to interpolate into the statute words which the legislature saw fit to leave out. The "maximum term of imprisonment" is the *maximum term fixed by the Court in imposing sentence.* The word "term" as applied to time signifies a fixed or definite period, a determined or prescribed duration.

28 American & English Encyp. of Law, 2nd Ed., 48; State vs. Twitchell 9 Wash. 530, 38 Pac. 134.

In this case the minimum sentence was two and one-half years, that being the time determined and prescribed by the Court as the minimum term plaintiff in error was to serve. Plaintiff in error and his counsel were aware of all of the facts even as they exist at the present time, when the matter was first presented to the Michigan Supreme Court. It is somewhat significant that neither the Court nor any of the attorneys for the respective parties thought of the construction now contended for in the earlier proceedings. In view of the precise language employed by the legislature, we submit that such a construction is an unnatural and unreasonable one.

However, counsel for plaintiff in error lays considerable stress in support of his construction upon the act of the Advisory Board of Pardons in the granting of certain paroles. He does not point out, and it is very significant that in not one of the cases referred to was a parole issued to take effect prior to the date of the expiration of the minimum term of imprisonment, and in not one instance was the good time owing to the prisoner at the date of authorization of the parole taken into consideration.

The indeterminate sentence law was in full force and effect at the date of the commission of the crime and at the date of sentence, and is therefore controlling. In accordance with the indeterminate sentence law, a person upon conviction is committed to prison for the maximum term, and that maximum term is the sentence. In Oliver vs. Oliver, 169 Mass. 592, in speaking of the indeterminate sentence law of that State, the Sourt said:

"Although such a sentence is in terms indeterminate, it is, in law for the maximum term, if until the expiration thereof a convict is in the custody of a law under his sentence, and in confinement unless he can

be and is paroled by the Board of Prison Commissioners, under the provisions of the act after the expiration of the minimum term of sentence."

CONCLUSION.

The authorities which have been cited by Counsel for plaintiff in error to the effect that the pardoning power has no authority to revoke or recall a parole, once legally issued, would not be criticised if such question were involved in the case at bar. We desire, however, to make clear that the question involved here is not the recall of a valid parole, but whether the parole was valid, so that it will be unnecessary for us to discuss the authorities cited by counsel for plaintiff in error, as there would be no disposition upon our part to controvert the proposition that a valid parole legally issued could not be revoked without notice and without an opportunity to be heard.

We have already indicated, no opinion was filed by the Court in this case and it therefore could not be presumed that the writ was refused upon the ground of the federal question when there are many other reasons which might have prompted the Court in its action:

First. It might have refused the writ because it was of the opinion that the question should have been raised by an application for a re-hearing;

Second. It might have refused the writ because it was of the opinion that the law of the case was settled;

Third. It might have refused the writ because it did construe the indeterminate sentence law as superseding the good time act.

Fourth. It might have refused the writ because it believed the good time act only applied to the maximum sentence.

The court might have refused this writ for many other

reasons, none of which would operate to affect the rights of the plaintiff in error under the federal constitution. We believe it was correct in refusing the writ upon this record; its judgment should be affirmed and the writ of error to this Court dismissed.

Respectfully submitted,

GRANT FELLOWS,

Attorney General of Michigan,

Counsel for Defendant in Error.

THOMAS A. LAWLER,

Assistant Attorney General of Michigan,

Of Counsel.

ADAMS v. RUSSELL, WARDEN.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 1048. Submitted May 12, 1913.—Decided June 10, 1913.

This court will not review the judgment of the state court when it rests not only on Federal, but also on non-Federal grounds, and the latter are sufficient to sustain it and were necessarily decided.

Whether state officers have power to grant a parole under a state indeterminate sentence act, and under what conditions, are for the state court to finally determine.

The state court having held that, under the applicable statutes, the parole granted to a prisoner was absolutely void and was therefore properly vacated, such ground is sufficient to sustain the judgment, and this court cannot review it on the asserted Federal question that the state officers had vacated the parole in such manner as to violate the prisoner's constitutional rights secured by the Fourteenth Amendment.

Whether a state statute allowing prisoners a reduction for "good time" is part of an indeterminate sentence act is for the state court to determine, and in this case it is a substantial local question on which to rest the judgment of the state court.

Writ of error to review 169 Michigan, 606, dismissed.

THE facts, which involve the jurisdiction of this court to review a judgment of the state court which rests upon non-Federal as well as Federal grounds, are stated in the opinion.

Mr. Fred A. Baker for plaintiff in error.

Mr. Grant Fellows, Attorney General of the State of Michigan, and *Mr. Thomas A. Lawler*, Assistant Attorney General, for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Error to review the action of the Supreme Court of Michigan, denying plaintiff in error a writ of *habeas corpus*.

The facts, as alleged in the petition, are these:

Plaintiff in error was convicted in the Recorder's Court of the City of Detroit of the crime of seduction and sentenced to imprisonment for not less than two and one-half years and for not more than five years. The case was reviewed by the Supreme Court of the State on a bill of exceptions and a writ of error and the sentence and judgment of the court below affirmed. Pending the writ of error he was released from imprisonment, but after his sentence was affirmed he was recommitted to prison and ever since has remained there. He duly made application to the Advisory Board of Pardons for a parole under Act No. 184 of the Public Acts of 1905 (June 7, 1905, Pub. Acts, 1905, p. 268), as amended. On December 5, 1911, the board granted and delivered to the warden of the prison a certificate or warrant of parole by which he was paroled "for two months from and after January 29, 1912."

On December 11, 1911, the action of the board paroling plaintiff in error was vacated, for the reason, as the records show, that it was at that date "in possession of facts not known at the time of such action." The warden was notified of the action of the board.

This action of the board was without notice to plaintiff in error and gave him no opportunity to be heard or to disprove the charge or facts alleged against him.

Having served his minimum sentence and having been granted a parole he is not now imprisoned on any process, judgment, decree or execution specified in § 8 of the Habeas Corpus Act of the State.

On March 5, 1912, he presented a petition for a writ of *habeas corpus* to the Supreme Court of the State in which he set up the facts of his case as above stated and alleged the illegality of his imprisonment as follows: (1) The Advisory Board has no jurisdiction or authority to vacate the parole granted to him, the power and authority to retake and return any paroled convict to the prison being

within the exclusive jurisdiction and discretion of the warden or superintendent of the prison. (2) If the Indeterminate Sentence Act is construed to confer such power upon the board without notice to the convict, then said act is in conflict with the provision of the constitution of the State which prohibits cruel and unusual punishment or the taking of life, liberty or property without due process of law, and against the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. (3) If so construed, the convict would be twice punished for the same offense. (4) The Indeterminate Sentence Act and the rules and regulations promulgated thereunder contemplate that a convict's parole will not be annulled except when he violates the terms and conditions of his parole or the rules and regulations. (5) His term of imprisonment has expired.

The Supreme Court instead of granting a writ of *habeas corpus* as prayed, granted a writ of certiorari to inquire into the cause of detention, under the authority of § 9889 of the Michigan Compiled Laws of 1897. The court also granted a common law writ of certiorari to bring the record of the Advisory Board before it, and both writs were made returnable April 2, 1912.

Returns were made to the writs, which plaintiff in error traversed so far as they set forth facts which were alleged in a communication to the board, attached to the returns.

The case so made up was argued and submitted to the court on April 2, 1912.

The Attorney General made no attempt to sustain the power or jurisdiction of the Advisory Board to annul a parole without notice to the convict, but contended that as the Supreme Court in affirming the conviction of plaintiff in error had held that the time he was out on bail should not be included in determining the length of his

imprisonment, he was "subject to imprisonment under the sentence for the unexpired part thereof remaining at the time of his release" (on bail), his minimum sentence not expiring until January 29, 1912, and his parole was void because his application was made and acted upon before the expiration of his minimum sentence.

The court held that his parole was void on the ground taken by the Attorney General, and the petition was denied. 169 Michigan, 606.

Plaintiff in error and his counsel inadvertently overlooked the fact that he was entitled under the laws of Michigan to a deduction from his minimum sentence for the "good time" accorded to convicts in the prisons of the State. Under the laws of the State he had earned and was entitled during the first and second years of his sentence, to five days "good time" for each month, and, during the third year, to six days each month, making a total of one hundred and thirty-eight days, so that his minimum sentence of two years had expired before his application for parole.

The prison parole law of the State has been in existence since 1905, and down to the decision of the Supreme Court in his case, it was the constant practice of the Advisory Board to receive and act upon applications of convicts before and in anticipation of the expiration of their minimum sentences and to grant paroles from a designated date, at or after the expiration of the convict's minimum sentence. At the time of the decision there were a large number of paroles outstanding and these have been recognized as legal and valid, and, notwithstanding the decision, no paroled convict or prisoner other than plaintiff in error has been kept in or returned to prison on the ground that his parole was prematurely granted and void. Discrimination is alleged to result against him and a violation of the Fourteenth Amendment to the Constitution of the United States.

Twenty-eight cases are enumerated, and it is alleged that the board, since the decision, has continued the practice.

Plaintiff in error alleged the illegality of his imprisonment as follows: (1) His minimum sentence had expired at the time the board received and acted upon his application for parole, and the order of release was a valid warrant or instrument for his discharge. (2) The board had no power to vacate it, or, if it had such power, it was only upon notice. (3) The parole law, as enforced, discriminates against him and denies him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. (6) The vacating of his parole was a violation of the due process clause of that Amendment. (7) He was not guilty of any violation of his parole. (8) The reasons given in his former petition were repeated and relied on.

It is not necessary to set forth the exhibits to the petition. They are sufficiently indicated in the petition. The board's action in vacating the parole was induced by a communication made to it by the prosecuting officer of the county, stating the circumstances of the crime for which Adams was convicted. They are not important, however, to the legal propositions involved, and even to a consideration of the latter a question of jurisdiction is interposed.

It will be observed that the questions in the second petition (that under consideration) are the same as those presented in the first. In both, local and Federal questions appear. We say Federal questions, for at least there are claims in words under the Constitution of the United States. They depend upon two propositions—(1) If the Indeterminate Sentence Act be construed as giving the Advisory Board power to annul the parole without notice, it violates the due process clause of the Constitution of the United States. (2) The parole as enforced denies plaintiff in error the equal protection of the law.

Granting for the time being that these propositions are not merely dependencies of the local questions, that is, are not dependent upon the statute, may we review them? We have seen that the Supreme Court decided that the parole was void, the Advisory Board having no power under the statute to grant it. The ground of the ruling was that plaintiff in error's minimum sentence had not expired. In his second petition he alleges that his term had expired on account of credit due him for "good time" accorded convicts in the prisons of the State, that his counsel had inadvertently overlooked the fact that he was entitled to such credit, which amounted to a total of one hundred and thirty-eight days, and that, therefore, his sentence had actually expired before his application for parole. The petition was denied without opinion and it is left indefinite upon what ground—whether the court entertained views adverse to plaintiff in error's on the Federal questions or whether it considered that its former decision determined his rights; whether, as a matter of procedure, a rehearing was his remedy, or whether the new claim of "good time" allowance was tenable under the statute. In such situation may we conjecture upon which ground the court decided and by conjecture acquire jurisdiction to review the judgment of the court?

In *Eustis* v. *Bolles*, 150 U. S. 361, it is decided that when there is a Federal and state question in the case and the latter is sufficient to sustain the judgment, this court will not review the judgment, and the logical course is to dismiss the writ of error. But we may be put to infer what points may have been raised and what was decided; in other words, whether the state court rested its decision upon a Federal ground or upon an independent ground. If the latter be contended, then it must appear that such ground was a good and valid one, sufficient to sustain the judgment. *Klinger* v. *Missouri*, 13 Wall. 257, 263. Other-

wise, as was said in *Neilson* v. *Lagow*, 12 How. 98, 110, "counsel might raise on the record some point of local law, however erroneous, and suggest that the court below may have rested its judgment thereon," and, therefore, if the independent ground be not good and valid it will not be presumed that the judgment was based upon it. See also *Magwire* v. *Tyler*, 8 Wall. 650. If, however, the state question have that quality, and there be uncertainty as to the ground of decision, this court will not assume jurisdiction. *Dibble* v. *Bellingham Bay Land Co.*, 163 U. S. 63, 69; *Allen* v. *Arguimbau*, 198 U. S. 149.

In *Commercial Bank* v. *Rochester*, 15 Wall. 639, a suit was brought to recover a tax charged to have been illegally levied and collected upon the capital stock of the bank alleged to have been invested in United States bonds. The case was dismissed for want of jurisdiction. We said, by Mr. Justice Miller: "It has been so often held by this court, that the question on which the plaintiff in error relies to give it jurisdiction must appear to have been decided by the state court, that it has become one of the settled principles on that subject." And further, "It is said in this case that the court [state court] *must* have decided in favor of the validity of the tax, which it is conceded would have given this court jurisdiction. But this does not appear either affirmatively or by necessary intendment. For the case may have been decided on the form of the remedy which the practice in the state courts required the plaintiff to adopt, or on the technical insufficiency of the pleading. In this uncertainty of the record as an indication we may, without going further, dismiss the case on that ground." It was objected that the state decision precluded the view that the case was decided on the local rules of pleading, to which it was replied that the state court was the proper tribunal to decide the question, and that we were not authorized to say that the court did not decide it correctly or that it made any deci-

sion adverse to the exemption of the securities of the United States from state taxation.

In *Railroad Company* v. *Rock*, 4 Wall. 177, and *Insurance Company* v. *Treasurer*, 11 Wall. 204, there was a possibility of two grounds of decision, Federal and local, and this court declined to review the judgments. See also *Todd* v. *Daniel*, 16 Peters, 521, 525.

In *Bachtel* v. *Wilson*, 204 U. S. 36, 41, 42, we said, by Mr. Justice Brewer, that before we can pronounce a judgment of a state court to be "in conflict with the Federal Constitution, it must be made to appear that its decision was one necessarily in conflict therewith and not that possibly, or even probably, it was." The case involved the consideration of a state statute which presented two questions, one of which, at least, presented no matter of a Federal nature, and in respect to each of which something might be said one way and the other, and until it was shown what the Supreme Court did in fact decide it was impossible to hold that the section as construed by it was in conflict with the Federal Constitution. Under these circumstances it was held that this court had no jurisdiction, and the writ of error was dismissed. *Johnson* v. *Risk*, 137 U. S. 300, was cited. No opinion was given by the state court in *Bachtel* v. *Wilson*, nor in the cited case. In neither case, therefore, did the record disclose the specific ground upon which the court proceeded. In such case, we said in *Johnson* v. *Risk*, by Mr. Chief Justice Fuller, that when the application of a state statute in a matter purely local was involved, if a plaintiff in error wished to claim that the cause was disposed of by the decision of a Federal question, he should obtain the certificate of the Supreme Court to that effect, or the assertion in the judgment that such was the fact. *DeSaussure* v. *Gaillard*, 127 U. S. 216, was adduced as deciding that to give this court jurisdiction of a writ of error to a state court it must appear affirmatively not only that a Federal

question was presented for decision but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been rendered without deciding it.

The rule is a salutary one in view of the different jurisdictions of the state courts and of this court. It leaves in both the full plenitude of their powers. It permits no evasion by the state court of the responsibility of determining the Federal question if necessary to be determined; it permits no assumption by this court of jurisdiction to review the decision of local questions. The sufficiency of the local question to sustain the judgment rendered, and the necessity for the determination of the Federal question necessarily we have to consider, but, as was said in *Johnson* v. *Risk*, "Where a defense is distinctly made, resting on local statutes, we should not, in order to reach a Federal question, resort to critical conjecture as to the action of the court in the disposition of such defense." And, of course, the principle is applicable whether the question is presented as a ground of defense or a ground of action.

It certainly cannot be said that in the case at bar, the Supreme Court had not grounds of decision based on the local law, whether considered substantively or administratively. The "good time" law and the indeterminate sentence law were enacted at different times. Whether the former is part of the latter is a state question, and whether the Supreme Court has decided in the present case contrary to its ruling in a prior case may or may not be true. And, again, it is a state question, whether the "good time" law applies to the minimum sentence imposed, which, it is contended by defendant in error, is fixed and certain, not subject to diminution, § 5 of the Indeterminate Sentence Act providing that "prisoners under the provisions of this act shall be eligible to parole after the expiration of their minimum term of imprisonment, and prisoners who have been twice previously con-

victed of a felony shall not be eligible to a parole." In other words, it is contended that the reduction for "good time" should be only from the maximum term, that being the sentence referred to in the "good time" law, which provides: "Every convict who shall have no infraction of the rules of the prison or the laws of the State recorded against him, shall be entitled to a reduction from his sentence," etc. It has been determined in other jurisdictions that the maximum term constitutes the sentence. See *Ex parte Spencer, Scholl and Moyer*, 228 U. S. 652; *Commonwealth* v. *Brown*, 167 Massachusetts, 144; *Oliver* v. *Oliver*, 169 Massachusetts, 592. In support of the contention that the Indeterminate Sentence Law and its provisions for parole did not in any way repeal or modify the Good Time Law plaintiff in error cites the last clause of § 6, which reads as follows:

"The convict so paroled, while at large, by virtue of such parole, shall be deemed to be still serving the sentence imposed upon him, and shall be entitled to good time the same as if confined in prison."

On the assumption made, the query yet remains, To what sentence is the good time to apply? We have seen, the Supreme Court has decided that a convict cannot be paroled until his minimum sentence has expired, and that good time does not apply to the minimum sentence, receives support from the fact that neither the counsel for the parties, nor the court upon the first petition, thought of the construction plaintiff in error now urges for the "good time" law and its operation to reduce his minimum sentence. We are not required to resolve the dispute. We have stated the respective contentions of the parties to show that there were substantial local questions in the case upon which the Supreme Court may have decided it.

It follows, therefore, upon the authority of the cases which we have cited, that the writ of error must be dismissed.

Dismissed.